A

COMPILATION

OF THE

INSOLVENT LAWS

OF

MARYLAND:

Together with the

DECISIONS OF THE COURT OF APPEALS

OF MARYLAND,

And of the

SUPREME COURT OF THE UNITED STATES,

ON THE SUBJECT OF INSOLVENCY:

WITH A

COPIOUS INDEX.

BY A MEMBER OF THE BALTIMORE BAR.

"Ego vero malo virum qui pecunia egeat, quam pecuniam quæ viro."
Cicero de Off. Liber. 2 § 20.

BALTIMORE:
PUBLISHED BY JOHN J. HARROD.

WM. WOODDY, PRINTER.
1831.

DISTRICT OF MARYLAND, SS.

BE IT REMEMBERED, That on this thirteenth day December, in the fifty-fourth year of the Independence of the United States of America, JOHN J. HARROD, SEAL. of the said District, hath deposited in this office, the title of a book, the right whereof he claims as proprietor, in the words following, to wit:

"A Compilation of the Insolvent Laws of Maryland: together with the Decisions of the Court of Appeals of Maryland, and of the Supreme Court of the United States, upon the subject of Insolvency; with a copious index. By a member of the Baltimore Bar. "Ego vero malo virum qui pecunia egeat, quam pecuniam quæ viro."—Ciccro de Off. Liber. 2. § 20.

In conformity to the act of the Congress of the United States, entitled "An Act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies during the times therein mentioned:" and also to the act entitled 'An Act supplementary to the act, entitled an act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

PHILIP MOORE,
Clerk of the District of Maryland.

PREFACE.

The Compiler, unlike many who have engaged in similar undertakings, cannot consider his production of sufficient consequence to authorize the insertion of a history of its rise and progress. The Laws of Maryland concerning Insolvency, and the Decisions pronounced upon the various cases embraced under that class, by the Supreme Court of the United States, and the Appellate Court of Maryland, are interspersed throughout twenty or thirty volumes, recourse to which is at all times inconvenient, and in many instances, impracticable at the moment it becomes requisite. A Compendium, embracing all those Laws and Decisions, it was thought, would, therefore, prove acceptable, not to the Profession only, but also to the rest of the community, a very great part of whom have not ready access to those volumes, even when disposed, to undergo the trouble necessarily attendant upon the investigation, or to incur the risk of misconstruing those Laws and Decisions, when found.

Besides, the mind is invariably more or less distracted by the fact of one's attention being directed to so many different books: whereas, by presenting the whole subject at one view, without any extraneous matter being permitted to intervene, a thorough acquaintance with that subject can be more speedily attained—which, upon the principle that "time is money," is no unimportant consideration.

So far, therefore, as this object shall be attained by means of the following compendium, the labour bestowed on it, will not be regretted; and so far will its claims upon public attention, be well founded.

Unusual as is the manner in which the Index to the Insolvent Laws of Maryland is arranged, it will be found more conducive

to facility in becoming acquainted with those Laws, th ordinary mode would probably have been considered: a more so, as the Index in question is composed of a very li number of general heads—such as Applicant, Trustee, &c

Apologies for the inaccuracies, be they few or many, these pages may be found to contain, are refrained from, apologies, how smooth and humble soever the style in they might be framed, would still leave those errors u rected.

Baltimore, March 11, 1831.

PART FIRST,

CONTAINING THE

INSOLVENT LAWS OF MARYLAND,

AND AN

Index to the same, preceded by a Catalogue of those Laws.

"There are two capital faults in our law, with relation to civil debts—one is, that every man is presumed solvent, a presumption in innumerable cases, directly against truth. Therefore, the debtor is ordered, on a supposition of ability and fraud, to be coerced his liberty, until he makes payment. By this means, in all cases of civil insolvency, without a pardon from his creditor, he is to be imprisoned for life: and thus a miserable mistaken invention of artificial science, operates to change a civil into a criminal judgment, and to scourge misfortune or indiscretion with a punishment which the law does not inflict on the greatest crimes.

The next fault is, that the inflicting of that punishment, is not on the opinion of an equal, and public judge: but is referred to the arbitrary discretion of a private—nay, interested and irritated individual. He who formally is, and substantially ought to be the judge, is in reality, no more than ministerial, a mere executive instrument of a private man, who is at once judge and party. Every idea of judicial order, is subverted by this procedure .*If the insolvency be no crime, why is it punished with arbitrary imprisonment? If it be a crime, why is it delivered into private hands, to pardon without discretion, or to punish without mercy, and without measure.* [Burke's speech previous to the election.]

Such is the reasoning of Burke, upon this subject, and such, it is deemed, is the most appropriate preface to the following pages.

In the following pages, it is designed to offer First, a compilation of the various enactments, on the subject of insolvency,

from the year 1805, to the year 1829, inclusive: to notice in each act the alterations that have been made therein, by subsequent provisions, as well as the instances, if any, in which a total repeal of any particular law has been made, and thus afford a synopsis of the insolvent system of Maryland.

SECONDLY.—An index will be annexed, comprising such matter as could conveniently be embraced under a few general heads.

THIRDLY.—A summary of the decisions pronounced by the Appellate Court of Maryland, relative to those insolvent cases, which have, at varous times, been submitted to that tribunal, and lastly, a compendium of the decisions made in the Supreme Court of the Union, on such insolvent cases as involve questions of constitutional law, or are affected in any manner by the laws of the United States. The cases of these descriptions, are, it is true, limited in number: but the importance of the doctrines therein discussed and settled, seemed to justify the insertion of them in a compilation, such as that now offered.

Congress, in pursuance of the authority vested in them, by 4th clause, 8th sec. of art. 1, of the constitution of the United States, passed an act entitled, "an act to establish a uniform system of bankruptcy throughout the Union," which was approved, and became a law, April 14th. 1800.—[See C. 173.] and was repealed on the 19th December, 1803.—[See C. 359, of laws U. S. of 1803.]

The law of Maryland, of 1805, C. 110, is considered the foundation of the Insolvent System of our state; a system, which although constructed gradually, and frequently altered, requires yet farther legislative improvement before it can be deemed complete in more than one of its branches.

It should be borne in mind by the reader, while perusing the following pages, that imprisonment of females for debt, was abolished, in Maryland, by the act of 1824, ch, 205.

A list of the general Insolvent Laws of Maryland.

1774, c. 28. Repealed by 1817, c. 183, sec. 4.

1805, c. 110. Considered as the foundation of the present insolvent system.

1806, c. 98. Extending the benefit of the insolvent laws to two years residents.

1807, c. 55. Specifies what is meant by the term "undue preference."

1807, c. 150. Declares that the loss of 100 dollars at any one time, by gaming, as mentioned in the act of 1805,

c. 110, should have been sustained within three years previous to application.

1808, c. 71. Explanatory of the 3d sec. 1805, dispenses, with previous notice and assent of creditors, &c.

1809, c. 179. Authorizes the County Courts, and the several Judges thereof, to act on insolvent cases during the recess of court, so far as personal discharge.

1812, c. 77. Relates to deeds, assignments, &c. by insolvents, &c.

1814, c. 122. Concerns the continuance of petitioners, &c. their withdrawal or dismissal, &c.

1816, c. 221. Establishes the mode of appointing the commissioners of insolvents, their power, &c.

1817, c. 183. Refers to debtors actually in confinement, &c. and authorizes the Judges of the Orphan's Court to receive and entertain applicants petitions, and to grant personal discharges.

1819, c. 84. Relates to the commissioners: to writs of ca ad respond: the power of commissioners to report unfavorable cases to Baltimore County Court, &c.

1820, c. 108. How Banking Co's. corporate bodies, &c. shall act in certain cases, concerning their insolvent debtors.

1820, c. 182. Relates to the commissioners of insolvents, &c.

" c. 186. Provides that the creditor shall support his insolvent debtor while in prison; the mode, &c.

" c. 194. Concerning trustees.

1821, c. 250, Relates to the commissioners, &c.

1822, c. 102. Unfavorable reports by commissioners, &c. The rejected applicant may prosecute a 2d petition, &c.

1825, c. 122. The right of an applicant personally discharged, to be free from arrest, &c. declared.

" c. 205. Relates to applications by citizens of any other state, for the benefit of the insolvent laws of Maryland, &c. &c. and to the commissioners, &c. cases of perjury in matters cognizable under the laws relating to insolvents.

1826, c. 253. Repeals the 2d § of 1825, c. 205.

1827, c. 70. Appointment of trustees, &c. their duties in certain cases, what is undue preference, with regard to judgments confessed, &c. &c. &c.

1828, c. 63. Right of insolvent, who has obtained a personal or final discharge, to be discharged from custody on attachment, &c. for that purpose shall produce certificate of discharge, &c. &c.

1829, c. 31. Empowers County Courts to award costs upon the continuance of petitions—the trial of suits or allegations, &c.

1829, c. 208. Cases of unfavorable report by commissioners; petitioner has a right to examination of his case, by the County Court, &c. gives certain powers to trustees.

CHAPTER XXVIII.

An ACT for the relief of Insolvent Debtors.

Supplements: November, 1792, ch. 51, and 1797, ch. 117.

How persons committed on execution, or for want of special bail, whose debts do not amount to two hundred pounds sterling, must proceed to obtain a discharge.

BE IT ENACTED, *by the right honourable the Lord Proprietary, by and with the advice and consent of his Governor, and the Upper and Lower Houses of Assembly, and the authority of the same*, That if any person, who shall after the first day of October next be committed or charged in execution, or for want of special bail, at any time after he or she shall have actually remained in prison, by the space of twenty days on such commitment or charge, shall petition any three justices of the peace of the county wherein such prisoner shall be detained as aforesaid, for his or her discharge, such justices shall thereupon appoint a time for their meeting, not less than thirty days, nor exceeding forty days thereafter at the court-house for said county or gaol in which he or she shall be so detained, for his or her discharge, and their said appointment shall certify in writing to the sheriff in whose custody he or she shall be; and the same sheriff shall, twenty days at the least before the time appointed for the said meeting, affix one copy of the said certificate at the door of the county clerk's office, and another copy thereof at the prison door of his county; at which said day so to be appointed, the said justices, or two of them, as well as the sheriff, are required to attend at the court-house or prison aforesaid, and the sheriff shall produce the body of such prisoner before the justices who shall attend, and also make known to the same justices the cause or causes of his or her imprisonment, and the time he or she hath been actually imprisoned under such commitment as aforesaid; and if it shall appear to the said justices who shall attend, that such person hath been actually imprisoned as aforesaid, and it doth not appear to them, or any two of them, from the cause or causes of his or her imprisonment, or by the allegation upon oath of the creditors, or some

of the creditors of the said prisoner, that the whole of the debts due and owing from him or her amount together to two hundred pounds sterling money or the value thereof; then such prisoner may deliver to the said sheriff a schedule of his or her whole estate, debts and credits, and also deliver to the said justices attending, a duplicate thereof, which schedule and duplicate shall be subscribed by such prisoner before the same justices, who shall thereto subscribe as witnesses; and the same justices, or any two of them, shall thereupon, at the request of such prisoner, administer to him or her the following oath, or affirmation, if a quaker: that is to say, "I, A. B. do affirm, or solemnly swear, that the schedule which I have delivered to the sheriff of ——— county, doth contain a full account, to the best of my knowledge and remembrance, of my whole estate, both real and personal, or that I have any title to, or interest in, and of all debts, credits and effects whatsoever, which I, or any in trust for me, have, or at the time of my petition had, or am, or was in any respect entitled to, in possession, remainder, or reversion; and that I have not, directly or indirectly, at any time since my imprisonment, or before, sold, leased, or otherwise conveyed, disposed of, or intrusted, all or any part of my estate, goods, stock, money or debts, thereby to defraud my creditors, or to secure the same to receive or expect any profit or advantage thereof; so help me GOD;" which said duplicate shall be by the said justices transmitted to the clerk of their county court, to be by him preserved in his office, for the better information of the creditors of such prisoner.

March, 1774.

All their property to be vested in sheriff, who shall dispose of it at public sale, and after deducting prison fees and seven *per cent*, and satisfying judgments, shall distribute the residue to creditors, in proportion to their demands.

II. AND BE IT ENACTED, That all the real and personal estate of such prisoner, either in possession, reversion, remainder, or in trust, for him or her, or in or unto which he or she has any claim or interest whatsoever, or which in any manner may, can or might, be subjected to the payment or satisfaction of creditors, and also all causes of action whatsoever of such prisoner, other than for trespasses on his person, or for slander, shall be vested in the sheriff aforesaid; (*a*) and such sheriff is hereby authorized, empowered and required, to sell and convey the said lands, tenements and hereditaments, for such estate, use, interest, right or title, as aforesaid, and also the said goods and chattels, to any person or persons whatsoever, for the best price

(*a*) By 1797, ch. 117, such estate, rights, &c. (where the trust is not fully executed,) are transferred to the succeeding sheriff, who is to complete the same, and the former sheriff, or his executors, are to account with such succeeding sheriff, who may, in default thereof, bring an action in his own name against such sheriff or executors.

March, 1774.

that can be got for the same, upon a public sale, whereof shall be given by advertisement, set up at the court-house and other public places of the county where such lands, ments, hereditaments, goods or chattels, shall lie or be twenty days at least before such sale, and the balance money, arising by such sale, after deducting the sum c shilling and four-pence current money for each day he keep such prisoner in his gaol, and find him or her victual also seven and an half *per cent.* for his trouble in the sal conveyance of the prisoner's estate as aforesaid, shall ap manner following: that is to say, the produce of that part c estate and interest of the said prisoner, and which his o creditors, by judgment, if any, or any claiming, or who or may claim under them, who have or shall have any lie assignment of such judgment, or otherwise, shall pay in o wards satisfaction of the said creditors, according to the c and priority of their judgments, or their lien thereon, and residue of the said balance shall pay and distribute among a creditors of such prisoner who shall apply therefor within th days after the aforesaid sale, in equal proportion to their mands, early notice of such design being previously give advertisements set up at the most public places of the co where such debtor resides, and likewise in the Maryl Gazette; and such sheriff shall and may maintain an action, assignee of such prisoner, in his own name, on and for any s cause of action as aforesaid; provided, that no judgment he after to be rendered against any person applying to be charged as aforesaid, nor any process thereon, shall create lien on the lands, goods or chattels, of such person, where the creditor obtaining such judgment shall or may have priority in the distribution of the money arising from the s of such lands, goods or chattels, to be distributed as aforesai

Actions in his own name.

Proviso:

III. Provided always, That before the sheriff shall obliged to sue in any such action, the creditor or creditors quiring the same shall give a bond to such sheriff, to indemn him against any charge that may accrue to him by means of a such suit, and in case of recovery and receipt of the debt damages, then the said sheriff shall make distribution of wh shall be recovered and received to the person or persons givi him such security, rateably and in proportion to their respecti demands, saving to such prisoner his or her necessary appar and the utensils of trade, not exceeding, in the whole, the val of five pounds current money, to be adjudged and ascertain by the said justices.

IV. PROVIDED ALSO, That before any suit shall be brought by any sheriff aforesaid, notice shall be given in the Maryland Gazette for four weeks successively, in order that all the creditors of such prisoner may have an opportunity, if they shall think fit, of joining in the request aforesaid to, and indemnication of, the said sheriff, and thereby entitled to receive rateably what shall be recovered; and the time from discharge of such prisoner as aforeasid, till such suit shall be brought, shall not be effected by any act for limitation of actions, provided such suit be commenced within one year from the time of such discharge; and the creditors, who shall apply and receive any sum or sums of money of the sheriff as aforesaid, shall refund and pay rateably, to such other creditors as shall apply for the same thereafter, the debt or debts due from such prisoner to him, her or them, so that the said last mentioned creditors may receive and be paid in equal proportion, to his, her or their demands; and in case such prisoner as aforesaid shall be liable, on a future breach of a contract by him or her made or entered into, before his or her discharge, the person or persons who shall be entitled as a creditor or creditors of such prisoner, under such breach of contract, shall have and receive his or her satisfaction rateably of the creditors, who shall have received the whole or a proportion of the debts due to them on such distribution as aforesaid; and, to prevent persons who may be committed or charged in execution, or for want of special bail, from lying in prison, until they have spent their substance, wherewith they should satisfy their creditors, and afterwards taking the benefit of this act, when they have nothing left to deliver up to their creditors, no person who shall be so committed or charged, from and after the expiration of this present session of assembly, shall be allowed or permitted to exhibit a petition for the purpose aforesaid, unless such petition shall be exhibited within sixty days after his or her commitment, or be charged in execution, or for want of special bail.

March, 1774.

Proviso.

V. AND BE IT ENACTED, That after delivering in such schedule and duplicate, and taking such oath or affirmation, and transmission as aforesaid, the said justices attending, or two of them, shall by their order in writing, command the sheriff forthwith to set at liberty such prisoner, which order shall be sufficient to discharge and indemnify such sheriff against any escape or action whatsoever, which shall or may be brought or prosecuted against him by reason thereof; and if any action shall be commenced against any sheriff or justice for performing

Prisoners to be set at liberty after delivering schedule on oath, &c.

March. 1774.

his duty in pursuance of this act, he may plead the general issue, and give this act and the special matter in evidence.

Proviso.

VI. PROVIDED ALWAYS, That notwithstanding such discharge, it shall and may be lawful for any creditor or creditors, as whose suit such insolvent prisoner was imprisoned, at any time afterwards to sue out a writ of *fieri facias*, or attachment, against any lands or tenements, goods or chattels, which such insolvent person shall thereafter acquire or be possessed of, by descent, gift, devise, bequest, or in a course of distribution, on any judgment obtained against such prisoner, without previously prosecuting any writ of *scire facias*, whereby the balance only remaining due on such judgment shall be levied.

Prisoners having obtained a discharge as above mentioned, if again arrested or imprisoned, may be discharged on motion.

VII. AND BE IT ENACTED, That if the said prisoner shall be arrested or imprisoned on any process sued out on any judgment or decree obtained against him or her, for any debt, damages or costs, contracted, owing or growing due, before his or her discharge as aforesaid, the court out of which such process issued shall and may discharge such prisoner on motion; (a) and if the said prisoner shall be arrested or imprisoned on any process for the recovery of any debt, damages or costs, contracted, owing or growing due, before his or her discharge as aforesaid, the court or justice, before whom such process shall be returned, shall and may discharge the party arrested out of custody, on his or her common appearance being entered, without any special bail; provided, that the discharge of the said prisoner shall not acquit any other person from such debt, damage or cost, or any part thereof, but that all such persons shall be answerable for the same, in such manner as they were before the passing this act.

Proviso.

VIII. PROVIDED ALWAYS, That in case any creditor or creditors of such prisoner shall, on the day appointed for the discharge of the same prisoner, appear at the prison or courthouse aforesaid, before the said justices, before the same prisoner is discharged, and shall allege that such prisoner hath, either directly or indirectly sold, lessened, or otherwise disposed of, in trust, or concealed, all or any part of his lands, money, goods, stock, debts, securities, contracts or estate, whereby to secure the same, to receive or expect any profit or advantage thereof, or to deceive or defraud any creditor or creditors to whom such prisoner is or shall be indebted, and shall also enter into a bond to such prisoner in the penaliy of fifty pounds current money, with such surety or sureties as the

(a) By November, 1792, ch. 51, the justices shall not relieve from confinement a person committed for any fine, forfeiture, or costs of prosecution.

said justices, or any two of them, shall approve, conditioned to pay and satisfy, all damages and costs such prisoner shall sustain or be put to, by reason of such creditor or creditors objecting against the said prisoner's discharge, and the same allegation being determined and adjudged against the said obligor, and shall lodge the said bond with the said justices, then such justices shall not grant any discharge of such prisoner, but shall wholly stay any further proceeding in order thereto and return the said bond to their next county court the second day of the sitting thereof at farthest; and the justices of the county court aforesaid shall and may hear and determine, in a summary way, such allegation of the creditor or creditors aforesaid, and if the same shall be determined by the said court against such prisoner, then the same prisoner shall have no aid or benefit of this act, and judgment shall pass against him or her for costs; but if the determination of the justices of the county court on such allegation shall be against such creditor or creditors, then the prisoner or prisoners aforesaid, shall, by the said court be immediately discharged, on his or her making, subscribing and delivering in open court, such schedule and duplicate as aforesaid, and there taking such oath or affirmation as aforesaid; and all his or her estate shall thereupon be invested in the sheriff, sold and disposed of, and applied, as if he or she had been discharged by the said three justices or any two of them; and it shall and may be lawful for the said justices of the county court to ascertain and determine the *quantum* of the damage, if any, that the prisoner hath sustained, by reason of the false allegation of such creditor or creditors, and thereupon adjudge the same with costs to the prisoner, provided such damages and costs shall not exceed the penalty of the said bond.

Justices may order the sheriff to bring the prisoners before the court, &c.

IX. AND, to the end that the truth may be the better inquired into, IT IS ENACTED, That the justices of the county court aforesaid may, at such time or times as they see proper, order the sheriff to bring the body of any prisoner, against whose discharge such objection shall be made as aforesaid, before the same court, and the same prisoner again remand to prison, and may appoint such time as they shall see fit for the trial of the issue, to be joined as aforesaid, which is hereby required to be with as little delay as may be.

Damages, &c. not to be vested in sheriffs.

X. AND BE IT THEREBY DECLARED AND ENACTED, That the damages and costs, so to be recovered by any prisoner as aforesaid, shall not be vested in the sheriff, or in any wise subjected to the benefit of any creditor or creditors.

March, 1774.

Persons convicted of false swearing to suffer as in cases of wilful and corrupt perjury.

XI. AND BE IT ENACTED, That any person who shall take the oath or affirmation by this act directed, and shall upon indictment be convict of perjury, or of wilfully and corruptly affirming any matter or thing therein contained, such person shall suffer as in cases of wilful and corrupt perjury, and likewise be liable to be taken on process *de novo*, and charged in execution for his or her debts, and shall never after have the benefit of this act.

Duration.

XII. This act to commence on the first day of October next, and continue in force for three years from that day, and to the end of the next session of assembly which shall happen after the end of the said three years.

Continued for three years, &c. by February, 1777; ch. 17, for seven years, &c. by March, 1780, ch. 21. Expired. Revived and continued to the end of the next session by May, 1788, ch. 10. By November, 1788, ch. 47, this act, and the act of May, 1778, ch. 10, are continued till the end of the next session. By 1789, ch. 59, the act of May, 1788, ch. 10, is continued to 30th October, 1796, &c. and by ch. 60, this act is continued to 30th October, 1790, &c. By 1790, ch. 59, the continuing act of 1789, ch. 60, is continued to 30th October, 1797, &c. By a general continuing act, 1797, ch. 116, it is further continued to 1st November, 1798, &c. and by 1798, ch. 71, this act is continued with its supplements to 30th October, 1805, &c. and then from year to year to 30th October, 1810, and to the end of the next session. Repealed by 1817, ch. 183, Sec. 4.

CHAP. LI.

November, 1792.

A Supplement to an act, * entitled, An act for the relief of insolvent debtors.

* 1774, ch. 28.

Preamble.

WHEREAS doubts have arisen with some of the justices of the peace of this state, whether, under the act of one thousand seven hundred and seventy-four, to which this is a supplement, they had not power to relieve persons from fines and forfeitures incurred for the breach of the penal laws of this state, and this legislature being willing to declare their opinion of the law, therefore,

Persons not to be relieved from the payment of fines by the insolvent law.

II. BE IT ENACTED, *by the General Assembly of Maryland*, That it shall not be lawful for any judge or justices, in any county in this state, to relieve from confinement, by virtue of the said law to which this is a supplement, any person who may be committed to the custody of any sheriff for any fine or forfeiture incurred, or to be incurred, for the breach of any law of this state, or for the costs arising on any prosecution.

III. And be it enacted, That this law be and continue in full force as long as the act to which it is a supplement shall continue. Duration.

The act of 1774, ch. 28, is continued to 31st of October, 1810, &c. and the several continuances are noted under it.

CHAP. CX.

An ACT for the relief of sundry insolvent debtors.

November, 1805.

Supplements: 1806, ch. 98, 1807, ch. 55, 150, 1808, ch. 71, 1809, ch. 179.

WHEREAS, John Sanders, Nathaniel Washington and Elizabeth K. Cartwright, of Saint-Mary's county; James Cook, Isaac Younger and James Cruickshanks, of Kent county; Richard Rawlings, of Francis, Robert W. Ellicott, Richard G. Rawlings, Jonathan Waters and Richard Odle, of Anne-Arundel county; Jonathan S. Hardesty and Levi Butler, of Charles county; Richard Harvey, Thomas B. Randall, John Brown, John Wray, Joseph Pierpoint, Thomas Crain, John Boyd, Patrick Mulligen, Richard Sweeney, Walter S. Hunt, James Maydwell, of Alexander, Benjamin Arnold, Absalom Chenoweth, Francis Mottee, John H. Barney, Peter Stewart, Thomas L. Judge, Thomas N. Vaughan, Jacob Stiler and Horatio Johnson, of Baltimore county; William Tibles, James Cowan, John Simmonds, James Roper, John M. Needles and John R. Bromwell, of Talbot county; Silas C. Bush, Joseph Bruff, Benjamin Polk, Benjamin Wailes, Edward H. Smith, George Vance, William Furniss and John Bruff, Richard Waters, of William, Ezekiel Gilliss and Richard Minish, of Somerset county; Daniel Parker, of Dorchester county; John Porter, Manasseh Logue, Peter Jackson, John Stevenson, Samuel Thompson, Edward Oldham, Thomas Coffield, John Carnan, Abraham Pennington and John Mackey, of Cæcil county; Isaac Peach and Richard G. Hardesty, of Prince-George's county; James Nelson, Benjamin Lusby and John Howenton, of the city of Annapolis; Samuel T. Wright, John Pennington, John Maynor, Andrew Raburgh and Edward Hargadine, of Queen Anne's county; John J. Purnell and Levin Long, of Worcester county; George W. Sykes and William R. Sewell, of Calvert county; Joshua Stevenson, Daniel Kemp, Samuel Coats, junior, David Waggoner, John Dartzboh, William Springer, William James Turner, Basil Pool and Preamble.

November, 1805. George Rowles, of Frederick county; William Ha Tobias Watkins, Corbin Preston, Thomas Adlum, Ale: Reese, Edward Jolly, Abraham Jarrett and Bennet Whee Harford county; William Boon, Joseph G. Daffin, and T Loveday, of Caroline county; Louis de Niroth, Robert N Robert Doyne, Philip Bier, senior, Louis Barbarin, W Merryman, Jacob Laudenslager, James Clayland, John John Miller, Henry Semmers, Edmund Curtis, Benjam Galpin, Charles Rogers, Isaac Smith, Charles Edwards, ard Nicols, John R. Caldwell, Elisha Stansbury, Joseph K Thomas Jones, Gilbert Middleton, Enoch Welsh, Th Meeteer, Jonathan Edwards, Walter Muscheett, Henry S huis, Charles Coffin, Perley P. Prichard, Henry Lay, W Bond, James Earengey, John Davis, Reuben Sewell, J Searight, David Butler, William Starr, John B. Sayre, W: Boyce, John Merryman, John Curson Seton and Howell I of the city of Baltimore; Mountjoy Bayly, Joseph Kem John Stephens, of Washington county; Washington I and Patrick Lyddan, of Montgomery county; and Willia Boyd, of Allegany county; by their petitions to this genera sembly, have set forth, that by reason of many misfortunes are unable wholly to pay their debts, and have prayed that may be discharged therefrom, upon their delivering up all property for the use of their creditors; and the prayer of petitioners being found reasonable, therefore,

On application of debtors to county court, by petition offering to deliver all their property to the use of creditors, notice to be given to them of such application, &c.

II. BE IT ENACTED, *by the General Assembly of Maryl* That on application of either of the said debtors to the co court of the county in which they severally reside, or to judge thereof in case of the actual confinement of such ap cant, by petition in writing, offering to deliver to the use of creditors all his property, real, personal or mixed, (the necess wearing apparel and bedding of himself and his family exc ed,) to which he is in any way entitled, a schedule whereof, oath or affirmation, as the case may require,) together wit list of the creditors of the persons so applying, on oath or firmation, as far as he can ascertain them, shall be annexed to accompany such petition, the county court shall direct perso notice of such application to be given to the creditors, or to many of them as can be served therewith, or their agent or tornies, or direct notice of such application to be advertised the most public places of the county where the said debtor sides, or to be inserted in some news-paper for such time as th may think proper, and on the appearance of the said creditc or neglect to appear on notice, at the time or times and pla

appointed, the county court shall administer to the petitioning debtor the following oath or affirmation, as the case may require: "I, A. B. do swear, or solemnly, sincerely and truly declare and affirm, that I will deliver up, convey and transfer, to my creditors, in such manner as the county court shall direct, all my property that I have, or claim any title to or interest in, and all debts, rights and claims, which I have, or am any way entitled to, in possession, remainder or reversion, (the necessary wearing apparel and bedding of myself and family excepted,) and that I have not, directly or indirectly, at any time, sold, conveyed, lessened, or disposed of, for the use or benefit of any person or persons, or intrusted, any part of my monies or other property, debts, rights, or claims, thereby to defraud my creditors, or any of them, or to secure the same to receive or expect any profits, benefits or advantages, thereby;" and the county court shall thereupon name such person as a majority of the creditors in value, their agents or attornies, shall recommend, to be trustee for the benefit of the creditors of the petitioning debtor, or in case of nonattendance of the creditors, or of their not making a recommendation, the county court shall name such person as they shall think proper, to be trustee as aforesaid.

Debtors oath.

Trustee to be appointed.

III. *And be it enacted*, That no person herein before mentioned shall be entitled to the benefit of this act, unless the county court shall be satisfied, by competent testimony, that he has resided the two preceding years within the state of Maryland prior to the passage of this act, unless, at the time of presenting his petition as aforesaid, he shall produce to the county court the assent, in writing, of so many of his creditors as have due to them the amount of two thirds of the debts due by him at the time of the passing of this act, or at the time of his application to the county court for the benefit of this act; provided, that foreign creditors, not residing within the United States, or not having agents or attornies therein, duly authorized and empowered to act in their behalf, shall not, for any purpose, be considered as creditors within the meaning of this clause; and provided also, that the county court, or any judge during the recess of the court, may, without the assent of the creditors as aforesaid, order to be discharged from custody any of the said petitioners who may at any time be in actual confinement in virtue of any proces issued, or that may be issued, in pursuance of any debt at this time due and owing, or at the time of his application to the county court for the benefit of this act, which discharge is hereby declared to be a release only of the person

Debtor must have resided two years in the state and produce the assent of two thirds *in amount* of his creditors to obtain the benefit of this act farther than the release of his person.

November, 1805.

of such debtor, but not of his property, unless the assent in writing of two-thirds in value of the creditors aforesaid be obtained.

By 1809, ch. 179, the benefit of this act is extended to all persons, who may apply for it.

Trustees to give bond.

IV. *And be it enacted*, That before such trustee proceeds to act, he shall give bond for the faithful performance of his duty to the state of Maryland, for the use of the creditors of said petitioning debtor, in such penalty, as the county court shall direct, which shall be recorded in the office of the county court, and a copy thereof, certified under the hand of the clerk of said court, shall be good evidence in any court of law or equity of this state; and if any trustee appointed by virtue of this act shall refuse to act, or die, or neglect to give bond as aforesaid in a reasonable time, to be adjudged of by the county court, or be removed by the county court for misbehaviour, the county court shall appoint such person as they shall think proper in his place, who shall give bond as aforesaid, and on giving such bond, (in case the said debtor had conveyed his property to the former trustee,) he shall immediately be vested with all the property of every kind, and all the debts, rights and credits, of the said debtor, as completely as the former trustee was vested with the same.

On debtor's executing a conveyance of all his property to trustee, court to discharge him from all debts, &c. in his individual or copartnership capacity; property subsequently acquired by gift, descent, &c. being still liable.

V. *And be it enacted*, That upon the said petitioning debtor's executing and acknowledging a deed to the trustee to be appointed as aforesaid, which deed is hereby directed to be recorded within the time limited by law, conveying all his property, real personal and mixed, and all debts, rights and claims, agreeable to the oath or affirmation of such debtors as aforesaid, and on his delivery to the said trustee all his said property which he shall have in possession, and of his books, papers, and evidence of debts of every kind, and the said trustee's certifying the same in writing to the county court, it shall be lawful for the county court to order that the said debtor shall be discharged, as well from all debts, covenants, contracts, promises and agreements, due from, or owing or contracted in his individual, as also in a copartnership capacity, by him, before the passage of this act, or at the time of his application to the county court for the benefit of this act, and by virtue of such order the said debtor shall be discharged as aforesaid; provided, that no person who has been guilty of a breach of the law, and hath been fined, or is liable to be fined for such breach, shall be discharged from the payment of any fine incurred for any breach of the laws of this state; and provided, that any

property which he shall hereafter acquire by gift, descent, or in his own right by bequest, devise, or in any course of distribution, shall be liable to the payment of the said debts; and provided also, that the discharge of such debtor shall not operate so as to discharge any other person from any debt. *November, 1805.*

Debtor to retain necessary apparel, &c.

VI. *And be it enacted*, That the county court may allow such petitioning debtor to retain the necessary wearing apparel and bedding of himself and family.

Court may direct sale of property and the produce thereof after satisfying judgments, &c. to be divided amongst the creditors.

VII. *And be it enacted*, That the county court may direct any trustee to be appointed by virtue of this act to sell and convey the property conveyed to him by the petitioning debtor, at such time and on such terms and conditions, as they shall think most for the advantage of the creditors, and the produce thereof, after satisfying all judgments, incumbrances and liens, shall be divided among the said creditors, agreeable to their several respective claims, but no judgment to be entered after the passage of this act, or after the time of his application to the county court for the benefit of this act, against any of the said debtors who shall take advantage of this act, shall be a lien on his real property, nor shall any process against his real or personal property have any effect thereon, except writs of *fieri facias* actually and *bona fide* paid before the passage of this act, or before the time of his application to the county court for the benefit of this act.

Trustee to sue in his own name.

VIII. *And be it enacted*, That any trustee may sue for, in his own name, and recover, any property or debt assigned to him by any debtor in virtue of this act, and may also prosecute to judgment any suit commenced, by the debtor, before his appointment.

Debtor to forfeit the benefit of this act by selling, &c. any of his property with a view to defraud his creditors or to give undue preference, &c.

IX. *And be it enacted*, That if any creditor, on the application of any debtor to the county court, or within two years thereafter, shall allege in writing to the county court, that such debtor hath, directly or indirectly sold, conveyed, lessened, or otherwise disposed of, or purchased in trust for himself, or any of his family or relations, or any person or persons, intrusted or concealed, any part of his property of any kind, or any part of his debts, rights or claims, thereby to deceive or defraud his creditors, or any of them, or to secure the same, or to receive or expect any profit or advantage thereby, or that he has passed bonds, or other evidences of debt, either without consideration, or on improper consideration, or lost more than one hundred dollars by gaming at any one time, or hath assigned or conveyed any of his property with intent to give an undue and improper preference to any creditor or creditors, or security, before

Such loss by by gaming must by act of 1807, ch. 150 have been

November, 1805.

within three years before petitioning.

the passage of this act, or before the time of his application to the county court for the benefit of this act, the said county court may thereupon, at the election of the creditor making such allegation, either examine the said debtor, and any person or persons to whom he may have made any conveyance of his property, or passed bonds or evidences of debt as aforesaid, on interrogatories, (of which interrogatories the person or persons answering the same shall, at the election of the person or persons making the allegation, be furnished with a copy or copies,) on oath or affirmation, touching the subject of the said allegations, or direct an issue or issues in a summary way, without the form of an action, to determine the truth of the same, and if, upon the answer of the said interrogatories, or the trial of the said issue or issues by a jury, such debtor shall be found guilty of any fraud or deceit of his creditors, or loss by gaming as aforesaid, or having given preference as aforesaid, he shall be forever precluded from any benefit of this act, and in case such debtor or other person shall, at any time thereafter, upon any indictment found in the county court of the county in which such debtor may reside, or in the county court where such oath or affirmation shall have been taken or administered, be convicted of wilfully, falsely, and corruptly, swearing or affirming to any matter or thing to which he shall swear or affirm by virtue of this act, he shall suffer as in case of wilful and corrupt perjury, and be forever debarred from any benefit of this act.

By 1807, ch. 150, to forfeit the benefit of this act by losing more than one hundred dollars by gaming at one time, it must have been within three years before petitioning.

Court to determine the allowance to trustee and inquire into complaints against him, &c.

X. *And be it enacted*, That the county court may allow any trustee to be appointed by virtue of this act such commission for his trouble, as they shall think reasonable, not exceeding eight *per cent.* and if any complaint shall be made to the county court of the conduct of any trustee by any creditor interested in the distribution of any estate, or if any trustee hath or shall become insolvent, the county court may call such trustee before him, and inquire into the cause of complaint in a summary way, and make such rules and orders as shall be judged necessary for the accomplishment of the object of the trust, and punish the said trustee as for a contempt in case of his not obeying the same, and if they think it necessary, they may remove the said trustee and appoint another person in his place.

*Note to section X. By section 15, in all cases of substituted trustees under this act, the creditors shall be consulted, and the court, governed by the choice of a majority of them in value, unless upon public or other reasonable notice, they do not appear.

November 1805.

XI. *And be it enacted*, That if any debtor, who shall petition in virtue of this act, shall be imprisoned at the time of exhibiting such petition, it shall be lawful for the county court, or any judge thereof, to order the sheriff, or other officer, in whose custody he shall be, to bring him before such court, or judge, at a certain time in the said order to be appointed, for the purpose of taking the oath or affirmation herein before mentioned, and the said sheriff, or other officer, shall obey the said order; and shall be entitled to a preference, after the discharge of all liens on the said debtor's estate, to all other creditors, in the payment of his account against the said debtor for legal fees of imprisonment, and his reasonable expenses in carrying the said debtor to the county court, or any judge thereof, in obedience to the order as aforesaid, any thing in this act to the contrary notwithstanding; and the court, or any judge thereof, may direct that the body of such debtor shall be discharged from imprisonment, and appoint a time when such debtor shall appear before the county court, to answer interrogatories which his creditors may propose to him, on not less than three months notice as aforesaid, any thing in this act to the contrary notwithstanding; provided, that such discharge from imprisonment shall not operate as a discharge of any of the debts of the said imprisoned debtors; and provided, that the said imprisoned debtor, at the time of his discharge, if required by the county court, or any judge thereof, shall enter into a bond, with such penalty and security as the county court, or any judge thereof, shall direct and approve, conditioned for his personal appearance at such time or times as the said court, or any judge thereof, shall direct, to answer the allegations of his creditor or creditors according to the provisions aforesaid; and if the said debtor shall not enter into bond as aforesaid, if required by the county court, or any judge thereof, then such debtor shall remain in confinement until the application, (if objected to,) shall be decided on.

If debtor be in prison, court may discharge his body from confinement on his giving security, if required, to appear at time appointed to answer his creditors, &c.

XII. *And be it enacted*, That the county court may, by order, limit and appoint the time for creditors to bring in and declare their claims, and may examine such creditors, and also the debtor, on oath or affirmation, concerning the same, and, on any contested claim, may, if they think proper, order the same, or any fact concerning the same, to be tried on an issue framed for that purpose, and may order any part of the petitioning debtor's estate to be set apart and retained for the eventual satisfaction of any contested claim, or to be brought again into distribution; and if any creditor to whom a real debt is due, shall collude with the debtor to gain an undue preference in the satis-

Court may limit time for bringing in claims, may examine creditors and debtors on oath concerning the same, &c.

November 1805.

faction of his debt, or for concealment of any part of the debtor's estate or effects, or shall contrive or concert any acknowledgment of the debtor, by parole, or in writing, or any kind of security, to give false colour to his claim for more than is *bona fide* due, such debtor shall lose his debt truly due, and shall be totally excluded in the distribution.

If debtor be arrested on execution, court may discharge him on motion; or if by process for recovery, on his common appearance being entered.

XIII. *And be it enacted*, That if the said debtors, or any of them, shall be arrested or imprisoned on any process sued out on any judgment or decree obtained against them, or any of them, for any debt, damage or costs, contracted, owing or growing due, before the passage of this act, or before the time of their application to the county court for the benefit of this act, the court, out of which such process issued, or any judge thereof, of the county where the said debtor may be arrested or imprisoned, on application made to them, shall, and may discharge such debtor on motion; and if the said debtors, or any of them, shall be arrested or imprisoned on any process for the recovery of any debt, damages or costs, contracted, owing or growing due, before the passage of this act, or before the time of their application to the county court for the benefit of this act, the court before whom such process shall be returned, shall and may discharge such debtor or debtors out of custody on his common appearance being entered, without any special bail; provided, that the discharge of such debtor or debtors shall not acquit or discharge any other person from such debt, damages or costs, or any part thereof, but that all such persons shall be answerable for the same in such manner as they were before the passing of this act, or before the time of their application to the county court for the benefit of this act.

Proceedings to be recorded by clerk.

XIV. *And be it enacted*, That all proceedings under this act shall be recorded by the clerk of the county court in which such debtor shall reside, who shall be entitled to the same fees as are fixed by law for his services in other cases, which shall be paid at the time of obtaining the discharge.

Court to consult creditors on appointing second trustee.

XV. *And be it enacted*, That in all appointments of trustees under this act by the county court, in the room of any person before appointed, the county court shall consult the creditors, and govern themselves by the choice of a majority of them in value, unless upon notice being given by public advertisement, or in such manner as they shall think reasonable, the said creditors shall neglect to make such choice.

Debtor, not executing a deed to tru-

XVI. *And be it enacted*, That none of the said debtors named in this act, who do not make application as aforesaid on or before the first day of September next, nor any other persons who

shall apply for the benefit of this act, who shall not execute a deed for all his estate, real, personal or mixed, to any trustee appointed in virtue of this act, within one month after the appointment of such trustee, and bond given by him according to the provisions of this act, shall have any benefit of this act. *November 1805.* tee, within a month, to derive no benefit from this act.

The 17th and 18th sections contained special provisions in favour of two petitioners under this act.

The 19th section extended the benefit of this act to certain persons, who petitioned in 1804 for an act of insolvency.

The 20th section contained a provision in favour of a petitioner, who was not a citizen of Maryland.

XXI. And whereas, much of the time of the general assembly, annually, and of trouble and expense to those unfortunate persons who are compelled to apply for acts of insolvency, may be saved, without impairing the rights of creditors, by vesting certain additional powers in the county courts; therefore, *Be it enacted*, That it shall and may be lawful for the county courts of the respective counties of this state, to extend to all such persons as may apply to such court for the same, before the first day of January, eighteen hundred and ten, all the benefits and privileges intended to be given to the persons included in this act, on their complying with the provisions thereof; provided, that previous to the application to the court of any such debtor, he shall give at least two months notice of his application in one newspaper printed in the city of Baltimore, and in some other newspaper printed most convenient to the residence of such applicant, and give such notice by advertisement set up at the most public places in the county where the said applicant resides. All persons may apply to the county court for the benefit of this act on giving two months notice.

By 1807, ch. 150, debtor in confinement may apply to single judge out of term time, and by 1808, ch. 71, notice is dispensed with.

By act of 1816, c. 221, section 8, all the parts of the above act, inconsistent with that of 1816 are repealed.

CHAPTER XCVIII.

November, 1806.

A Supplement to an act,* entitled, an Act for the relief of sundry insolvent debtors.

*1805, ch. 110.

WHEREAS, doubts have arisen on the construction of several of the provisions of the act of the general assembly of Maryland, passed at November session, one thousand eight hundred and five, entitled, An act for the relief of sundry insolvent Preamble.

November, 1806. debtors, and the said law in some instances requiring amendment; and it appearing proper to remove the aforesaid doubts, and to remedy the defects in the said law; therefore,

Benefit to be extended to persons, who have resided in the state two years previous to application.

II. *Be it enacted by the General Assembly of Maryland*, That on the application of any insolvent debtor to any county court of the county in which the said debtor shall reside, or to any one of the judges thereof, before the first day of January, one thousand eight hundred and ten, it shall and may be lawful for the said court, or judge, to extend to the said debtor all the benefit and advantages intended to be given to the several persons mentioned in the said act of assembly above recited, and to which this is a supplement, upon the said debtor's complying with the requisites of the said law; provided, that it shall not be necessary, to entitle the said debtor so applying for the benefit of this law, that he shall have resided two years within the state of Maryland, prior to the passage of the above recited act, but no person making application to the said court, or judge, for the benefit of this act, shall have the benefit thereof, unless the said court, or judge, shall be satisfied, by competent testimony, that the said debtor has resided two years within the state of Maryland next before the making of his application as aforesaid.

CHAPTER LV.

November, 1807. A Further supplement to an act,* entitled, An act for the relief of sundry insolvent debtors.

* 1805, ch. 110.

Preamble. WHEREAS doubts are entertained as to the meaning and construction of the words "undue and improper preference to any creditor or creditors or security," contained in the ninth section of the act to which this is a supplement; therefore,

Certain deeds, &c. undue and improper preference, &c.

II. BE IT ENACTED, *By the General Assembly of Maryland*, That any deed, conveyance, transfer, assignment or delivery, of any property, real, personal or mixed, of any debts, rights or claims, to any creditor or creditors, security or securities, made by any person with a view or under an expectation of being or becoming an insolvent debtor, shall be, and the same is hereby declared to be an undue and improper preference to such creditor or creditors or security, within the true intent and meaning of the said ninth section of the said act.

CHAPTER CL.

November 1807.

A Further supplement to the act,* entitled, An act for the relief of sundry insolvent debtors, passed at November session, eighteen hundred and five.

*1805, ch. 110.

Preamble.

WHEREAS by the original act to which this is a supplement, it is provided, that if any debtor, applying for the benefit of the said act, shall have at any time lost more than one hundred dollars by gaming at one time, such debtor shall be forever precluded from any benefit of the said act, by the generality of which provision the whole space of a man's life is embraced, which is deemed unreasonable and improper; therefore,

No debtor to be precluded unless he has lost at gaming within three years.

II. *Be it enacted by the General Assembly of Maryland*, That no debtor applying for the benefit of the said act, and the act supplementary thereto, shall be precluded from the benefit thereof for and on account of such debtor having at any time lost more than one hundred dollars by gaming at one time, unless such losing shall have happened within the space of three years next before the application of such debtor for the benefit of the same.

Court, &c. may order the sheriff, &c. to bring debtors, if imprisoned, before them to take oath, &c.

III. And, whereas, by the twenty-first and last section of the original law to which this is a supplement, any debtor not named in the said original law, who is or hereafter may be in actual confinement, and who applies for the benefit of that law under the provisions contained in the aforesaid section, is placed in a very different situation from that of a debtor named in the said law, who should be in confinement, inasmuch as the former must apply to the court of his county, which is only in session twice a year, and is not permitted to apply to a single judge out of term time, and must also give two months previous notice of his intended application; therefore, *Be it enacted*, That if any debtor, who shall petition in virtue of the said original act and the supplement thereto, shall be imprisoned at the time of exhibiting his petition, it shall be lawful for the county court, or any judge thereof, to order the sheriff, or other officer, in whose custody he shall be, to bring him or her before such court or judge, at a certain time in the said order to be appointed, for the purpose of taking the oath, or affirmation, in the said original act prescribed to be taken by an insolvent debtor, and the said sheriff, or other officer, shall obey the said order, and shall be entitled to a preference, after a discharge of all liens on the

November, 1807. said debtor's estate, to all other creditors, in the payment account against the said debtor for legal fees of imprison and his reasonable expenses in carrying the said debtor t county court, or any judge thereof, in obedience to the or aforesaid, any thing in the said original act or the suppl thereto notwithstanding; and the court, or any judge th may direct that the body of such debtor shall be disch from imprisonment, and appoint a time when such debtor appear before the county court to answer interrogatories w his creditors may propose to him, on not less than three m notice, as by the said original act is provided, any thing in said original act, or the supplement thereto, to the contrary withstanding; provided that such discharge from imprison shall not operate as a discharge of any of the debts of the imprisoned debtor; and provided, that the said imprisoned d or, at the time of his discharge, if required by the county c or any judge thereof, shall enter into a bond, with such pe and security as the county court, or any judge thereof, shal rect and approve, conditioned for his personal appearanc such time or times as the said court, or any judge thereof, s direct, to answer the allegations of his creditor or credi according to the provisions aforesaid, and if the said debtor s not enter into bond aforesaid, if required by the county cc or any judge thereof, then such debtor shall remain in cont ment until the application, if objected to, shall be decided u

By 1808, ch. 71, no notice previous to application to be given by im oned debtors.

IV. And, whereas the said original act requires that debtor who shall apply for the benefit of the said act, shall p duce to the court, or judge, to whom he shall apply, the asse in writing, of so many of his creditors as have due to them t thirds of the amount of the debts due by such debtor at the ti of his application, and in many instances more than one-third the debts due by debtors applying for relief is due to banks other corporate bodies, or to the estates of persons deceased, to trustees who represent creditors or others, and the office having charge of the affairs of such corporate bodies, the exec tors and administrators of such deceased person, and the tru tees before mentioned, although not desirous of preventing t release of such debtor, do not conceive themselves authorize to consent to his release; therefore, *Be it enacted*, That in ord to remove all doubts as to the power of such corporate bodie executors, administrators and trustees, to sign their assent to th release of any insolvent debtor, under the insolvent laws of thi

Corporate bodies, &c. may sign their assent to debtors release.

state, the said corporate bodies, executors, administrators and trustees, be, and they, or any of them, are hereby declared duly authorized to sign their assent to such release of any insolvent debtor, whenever they, or any of them, shall deem the same right and proper. *November*, 1807.

CHAPTER LXXI.

November, 1808.

A Further supplement to the act,* entitled, An act for the relief of sundry insolvent debtors, passed at November session, eighteen hundred and five.

* 1805 Chapter 110.

WHEREAS, by the construction which has been given by some of the courts of this state to the third section of an act, supplementary to an act to which this is also a supplement, passed at November session, eighteen hundred and seven, it appears that the object of the legislature thereby contemplated has not been accomplished; therefore, Preamble.

II. BE IT ENACTED, *by the General Assembly of Maryland*, That any imprisoned debtor may hereafter, immediately upon his or her confinement, without any previous notice, make application, by petition in writing, to the court of the county in which he or she shall be so imprisoned, or to any judge thereof, upon his or her complying with the other provisions of the said original act, and the supplements thereto, except that provision which requires the assent of two-thirds of his or her creditors, and it shall thereupon be lawful for the said court or judge to order the sheriff, or other officer in whose custody he or she shall be, to bring him or her before such court or judge, at a certain time in the said order to be appointed, for the purpose of taking the oath, or affirmation, in the said original act prescribed to be taken by an insolvent debtor, and the said sheriff, or other officer, shall obey the said order, and shall be entitled to a preference, after a discharge of all liens on the said debtor's estate, to all other creditors, in the payment of his account against the said debtor for legal fees of imprisonment, and his reasonable expenses in carrying the said debtor to the county court, or any judge thereof, in obedience to the order aforesaid, any thing in the said original law, or the supplements thereto, notwithstanding; and the court, or any judge thereof, may direct that the Imprisoned debtors may make application without previous notice, on complying with the other provisions of the original act, and the court may discharge the body from prison, and appoint a day for them to answer interrogatories, &c.

November, 1808.

body of such debtor shall be discharged from imprisonment, and appoint a time when such debtor shall appear before the county court, to answer interrogatories which his creditors may propose to him or her, on not less than three months notice, as by the said original act is provided, any thing in the said original act, or the supplements thereto, to the contrary notwithstanding; provided that such discharge from imprisonment shall not operate as a discharge of any of the debts of the said imprisoned debtor, unless the said debtor shall, before his final hearing, obtain the assent, in writing, of two-thirds in amount of his or her creditors; and provided, that the said imprisoned debtor, at the time of his discharge by the county court, or any judge thereof, shall enter into bond, with such penalty and security as the county court, or any judge thereof, shall direct and approve, conditioned for his personal appearance at such time or times, as the said court, or any judge thereof, may direct, to answer the allegations of his or her creditor or creditors, according to the provisions aforesaid, and if the said debtor shall not enter into bond as aforesaid, if required by the county court, or any judge thereof, then such debtor shall remain in confinement until the applications, if objected to, shall have been decided upon.

Court may appoint a trustee, in whom all the property, &c. of the debtor shall immediately vest.

III. And be it enacted, That in all cases of petitions of insolvent debtors, as well those that are now depending as those that may hereafter apply for the benefit of the acts for the relief of insolvent debtors, the court before whom such petition may be depending, or any judge thereof, may appoint a trustee for the benefit of the creditors of such debtor, and may order that such trustee shall enter into bonds, with such surety or sureties as the said court or judge shall approve, and on filing such bond with the clerk of the court, all the property, real, personal and mixed, of such debtor, and also all claims which shall be due to such debtor, shall immediately be vested in such trustee, for the use and benefit of the creditors of such debtor, any thing in any other law to the contrary notwithstanding.

CHAPTER CLXXIX.

November, 1809.

An Act relating to the Act,* entitled, An Act for the relief of sundry Insolvent Debtors, passed November Session, eighteen hundred and five, and to the several Supplements thereto.

* 1805, ch. 110.

BE IT ENACTED, *by the General Assembly of Maryland*, That it shall and may be lawful for the county courts of the respective counties, or the several judges thereof during the recess of the said court, to extend to all such persons as may apply to such court for the same, all the benefits and privileges intended to be given to the persons included in the said act, on their complying with the provisions of the said original act and of the several supplements thereto.

Benefit of the act extended.

December, 1812.

CHAPTER LXXVII.

A further additional supplement to the act entitled "An act for the relief of sundry insolvent debtors."

Sec. 1 BE IT ENACTED *by the General Assembly of Maryland*, That all deeds, conveyances, transfers, assignments or sales of any property, real, personal or mixed, or of any debts, rights or claims, to any creditor or creditors, security or securities which shall hereafter be made by any person with a view, or under an expectation of being or becoming an insolvent debtor, and with an intent thereby to give an undue and improper preference to such creditor or creditors, security or securities, shall be absolutely null and void, and the title to property or claims so attempted to be conveyed, transferred, assigned or sold, shall vest in the trustee or trustees of such insolvent debtors, as effectually as any property specified in the schedule of such insolvent.

Deeds, conveyances, &c. made with an intent of becoming insolvent made void—in whom such property shall vest.

II. *And be it enacted*, That any creditor of an insolvent debtor, who assents that such insolvent debtor shall obtain the benefit of the insolvent law, shall make affidavit, or affirmation, (as the case may be) that the said debtor is *bona-fide* indebted to him in the sum claimed as due, and that he has received no security or satisfaction for the same, or any part thereof, before

Creditors assenting that debtors shall obtain the benefit of insolvent law shall make affidavit, &c.

December, 1812.

some justice of the peace of this state, or notary public residing in the United States; and without such affidavit or affirmation annexed to the assent aforesaid, such creditor shall not be included among the assenting creditors.

Who shall be entitled to a personal release.

III. *And be it enacted*, That any debtor who shall petition for the benefit of the insolvent laws, and shall comply with all the terms and conditions of such laws, except obtaining the assent of two-thirds of his creditors in amount, shall be entitled to a personal release, except in case where interrogatories or allegations have been filed, and have not been satisfactorily answered and decided in favor of such debtor, which release shall be a good and effectual discharge of the person from all arrests on mesne or execution process, on account of any debt or contract incurred or entered into by such insolvent debtor: *Provided*, such debtor shall at the time of his arrest on mesne process, execute a warrant of attorney, authorizing some attorney to appear for him in the court to which such process is returnable.

Proviso.

Final release.

IV. *And be it enacted*, That no person shall be entitled to the benefit of said insolvent laws oftener than once in two years, nor shall any debtor be entitled to a full and final release a second time, until he shall pay over or convey to his trustee or trustees, estate sufficient in amount to pay fifty per cent. of his debts at the time of his second application as aforesaid; nor to a full and final release a third time, until he shall pay over or convey to his trustee or trustees, estate sufficient in amount to pay seventy-five per cent. of his debts, at the time of his third application as aforesaid: *Provided*, That nothing in this act contained shall prevent the right of such petitioner to obtain the benefit of a personal release in such cases.

This section repealed by the act of 1820, c. 108.

Persons vexatiously withholding their assent.

V. *And be it enacted*, That if any petitioning debtor shall not be able to produce to the county court at the time of his final hearing, the assent of two-thirds of his creditors in amount, and against whom no interrogatories or allegations shall have been filed, or if filed, shall have been satisfactorily answered or decided in favor of such debtor, and the said debtor shall allege in writing to the county court, within six months after the time of his final hearing as aforesaid, (having given to his creditors one month's notice in the manner prescribed in the act to which this is a supplement, of his intention) that he is not able to obtain the assent of two-thirds of his creditors in amount, and that such assent is vexatiously and unreasonably withheld, it shall be in the power of the county court to examine in a summary manner, into the truth and merits of such application, and where in their opinion, such assent shall be vexatiously and unreasonably withheld,

the said court is hereby authorized to extend to such applicant the full benefit of the acts of insolvency. *December*, 1812.

VI. *And be it enacted*, That the appointment of a trustee or trustees under said insolvent laws, shall operate as an assignment of all the insolvent's property, so as to vest the title to the same in such trustee or trustees, without the necessity of such insolvent executing a deed thereof: *Provided*, That nothing in this act contained, shall be construed to extend to applications now pending for the benefit of said insolvent laws. Appointment of trustees shall operate as an assignment of insolvent's property.

CHAPTER CXXII. *February*, 1815.

An additional supplement to the act entitled, an act for the relief of sundry insolvent debtors.

I. Be it enacted *by the General Assembly of Maryland*, That no petition for the benefit of the original act for the benefit of sundry insolvent debtors, and the several supplements thereto, now depending in any of the county courts of this state shall be continued beyond the second session of such court next after the passage of this act, unless in cases where the court shall be satisfied a further continuance is necessary to procure testimony, material and competent on the trial of any allegations made against the petitioner's discharge, nor shall any such petition hereafter to be filed, be continued beyond the first court next after the filing thereof unless for the causes aforesaid. Petitions not to be continued.

II. *And be it enacted*, That upon the dismassal or withdrawing of any petition for the benefit of said acts, or upon decisions thereon against the petitioner, it shall not be necessary to revive by *scire facias* any judgement which may have been suspended by such petition, and process of execution may be issued upon such judgments as if no such suspension had taken place. Dismissal of petitions.

III. *And be it enacted*, That the time intervening between the petitioning of any of said debtors and the time that any of said petitions may be dismissed, shall not be computed on any plea of limitation so as to defeat any claim of any person against such debtor. Plea of limitation.

February, 1816.

CHAPTER CCXXI.

An act relating to Insolvent Debtors in the City and County of Baltimore.

Governor and council to appoint commissioners.

SEC. 1. *Be it enacted by the General Assembly of Maryland*, That the governor and council shall commission three persons of legal knowledge, integrity and experience, as commissioners of insolvent debtors for the city and county of Baltimore, and from and after the issuing such commission, the said commissioners shall have and exercise the powers and authority hereinafter mentioned.

All applications to the court or judges to be referred to commissioners.

2. *And be it enacted*, That in all cases of applications which shall hereafter be made to Baltimore county court, or the judges thereof, for the benefit of the insolvent laws of Maryland, it shall be the duty of the court, or the judge to whom the application may be made, forthwith to refer the same, together with the schedule, petition, and other papers, to the said commissioners, who shall thereupon appoint a provisional trustee to take possession for the benefit of the creditors of such insolvent debtor, of all property, estate and effects, books, papers, accounts, bonds, notes, and evidences of debt; and the said commissioners shall take bond, with security to be by them approved, for the appearance of such insolvent debtor, to answer such interrogatories as may be propounded to him by any of his creditors, or such allegations as may be filed against him, within the time hereinafter mentioned; and the said commissioners shall immediately thereafter report to the said court, or judge, that the trustee appointed by them as aforesaid, is in possession of all the property of such insolvent debtor; and the said court, or judge, shall thereupon grant a personal discharge to such insolvent debtor.

Commissioners to cause notice to be given, &c.

Modified by 1820 c. 182, § 1.

3. *And be it enacted*, That the said commissioners shall, within ten days from the time of such personal discharge being granted, cause notice to be given in one or more newspapers in the city of Baltimore, that such personal discharge hath been granted, and of the time fixed by the said court or judge for the final hearing, and requiring the creditors of the insolvent to appear at such time and place as the said commissioners may appoint, to attend and nominate some person or persons whom the said commissioners shall appoint as trustee or trustees, for the benefit of the creditors, and to give to the said commissioners all information in their possession to enable them to report to the court as hereinafter directed.

December, 1816.

4. *And be it enacted*, That the notice herein before directed to be given by the commissioners shall be in lieu of the notice directed to be given by the act, entitled, An act for the relief of sundry insolvent debtors, and the expense of giving such notice shall be defrayed by such insolvent debtor. — to be in lieu of that directed by the original act.

Duty of commissioners.

5. *And be it enacted*, That it shall be the duty of the said commissioners diligently to inquire and examine into the nature and circumstances of all such applications, and the said commissioners shall have power to compel such insolvent debtors to answer on oath all interrogatories touching the subject matter, which may be exhibited or propounded on behalf of the creditors, or any of them, and if upon such examination it shall appear that the said insolvent debtor hath complied with the terms and conditions of the insolvent laws, and hath acted fairly and *bona fide*, it shall be the duty of the said commissioners to report the same to Baltimore county court, and return the schedule, and all proceedings which may have been had before them, to the office of the clerk of Baltimore county court, there to be recorded, and the said judges shall thereupon grant a full and final discharge under such laws, without requiring the assent of the creditors of such insolvent debtor; *Provided however*, that the judges shall not grant such final discharge if allegations shall be filed by any creditor of such insolvent debtor, at least ten days before the time fixed for the final discharge of such debtor, until such allegations shall have been heard and determined in favour of such insolvent debtor; *And provided also*, That nothing herein contained shall be construed to deprive the creditor or creditors of any insolvent debtor of the right of filing allegations at any time within two years from the time of discharge.

Provisos.

Conveyances, giving an undue preference, declared void.

6. *And be it enacted*, That all deeds, conveyances, transfers, assignments or sales, of any property, real, personal or mixed, or of any debts, rights or claims, to any creditor or creditors, security or securities, which have been or shall hereafter be made, by any person, with a view or under an expectation of being or becoming an insolvent debtor, and with an intent thereby to give an undue and improper preference to such creditor or creditors, security or securities, shall be absolutely null and void, and the title to property or claims so attempted to be conveyed, transferred, assigned or sold, shall vest in the trustee or trustees of such insolvent debtors, as effectually as any property specified in the schedule of such insolvent debtor; *Provided however*, that no insolvent debtor shall be precluded from the benefit of the insolvent laws on account of any such deeds, conveyances, transfers, assignments, or sales as aforesaid.

December, 1816.

Commissioners compensation.

7. *And be it enacted*, That the said commissioners, (any two of whom shall be competent to act) shall be entitled to receive for their services such compensation as the judges of Baltimore county court may deem to be reasonable and proper, which said compensation shall be paid by the petitioner, or his trustee, as the said court may order and direct.

Repeal.

8. *And be it enacted*, That all such parts of the act passed at November session eighteen hundred and five, entitled, An act for the relief of sundry insolvent debtors, and the several supplements thereto, as are inconsistent with, or repugnant to, the provisions of this act, or any of them, be and the same are hereby repealed.

CHAPTER CLXXXIII.

February, 1817.

An additional Supplement to the act, entitled, An act for the relief of sundry Insolvent Debtors, passed November session eighteen hundred and five.

Debtors may apply to judges of orphan court.

BE IT ENACTED, *by the General Assembly of Maryland*, That any imprisoned debtor may hereafter, immediately upon his or her confinement, make application, by petition, in writing, to any judge of the orphans court of the county in which he or she shall be so imprisoned, for discharge from said confinement, and the said judge shall have, and he is hereby invested with, the same power as is exercised by a judge of the county court, to grant such discharge, upon the petitioner giving bond, with security, and in a penalty to be approved and *preserved* by said judge for his or her appearance before the judges of the county court of said county, at a time to be appointed by said judge, for a hearing before said court, on said petition, according to the provisions of the said original act.

Who are vested with same power as judges of county courts

II. *And be it enacted*, That the said judge of the orphans court in the execution of this act, shall have and exercise all the powers which are had and exercised by any judge of a county court under the original act, and the several supplements thereto.

Proceedings to be lodged with clerk.

III. *And be it enacted*, That all proceedings to be had by any judge of the orphans court under this act, shall be by him lodged with the clerk of the county court, within thirty days thereafter, and the judges of the court shall proceed thereon according to the provisions of the original act, and the several supplements thereto.

IV. *And be it enacted*, That the act of assembly, entitled, An act for the relief of insolvent debtors, passed in the year seventeen hundred and seventy-four, be, and the same is hereby repealed. *February*, 1817. Repeal.

V. *And be it enacted*, That the said judge of the orphans court shall be entitled to the sum of one dollar as a compensation for his trouble, to be paid by the said debtor. Compensation.

VI. *And be it enacted*, That nothing herein contained shall be held to repeal, alter or change, An act, entitled, An act relating to insolvent debtors in the city and county of Baltimore. Not to relate to debtors in Baltimore.

VII. *And be it enacted*, That in all cases where application hath or shall hereafter be made to any judge of the county or orphans court, for the benefit of the act to which this is a supplement, the petition shall not be dismissed by the county court before the term appointed for the hearing of such application by the judge to whom the same hath been or shall be made. Applications not to be dismissed, &c.

CHAPTER LXXXIV.

A Supplement to an act, entitled, An act relating to Insolvent Debtors in the City and County of Baltimore. *January*, 1819.

1. *Be it enacted, by the General Assembly of Maryland*, That all applications by any person or persons residing in the city or county of Baltimore, for the benefit of the insolvent laws of this state, shall hereafter be made to the commissioners of insolvent debtors for the city and county of Baltimore, appointed in virtue of the act to which this is a supplement, or to either of them, instead of being made to Baltimore county court, or the judges thereof; and the said commissioners are hereby authorized and empowered, to administer to the applicant the oath directed to be taken by the said insolvent laws, and they, and each of them, are hereby vested with all the powers of Baltimore county court, or the judges thereof, in relation to such application, and shall grant a personal discharge to such applicant in the same manner as Baltimore county court, or any judge thereof, is directed by the second section of the act to which this is a supplement, and they shall fix the time for the final hearing before Baltimore county court; and if upon the examination directed to be made by the said act, it shall appear that the said applicant hath complied with the terms and conditions of the Passed Jan. 24, 1820. All applications for the benefit of insolvent laws to be made to commissioners, &c.

January, 1819.

said insolvent laws, and hath acted fairly and *bona fide*, it shall be the duty of the said commissioners to report the same to Baltimore county court, in the manner directed by the fifth section of the act to which this is a supplement, and the said court shall proceed thereon as directed by the said section: and if it shall appear, to the said commissioners, that the said applicant hath not complied with the terms and conditions of the said insolvent laws, and hath not acted fairly and *bona fide*, it shall be the duty of the said commissioners to certify the same to Baltimore county court.

Persons obtaining a personal discharge and not obtaining a final one, &c.

2. *And be it enacted*, That if any person or persons, being arrested on a writ of *capias ad respondendum* (issued against him, her or them,) shall obtain a personal discharge from the said commissioners according to the provisions of the insolvent laws, and such person or persons shall not obtain a final discharge under such laws, then and in every such case, if any suit or action shall or may be depending against such person or persons, in which his, her or their common appearance had been entered, it shall and may be lawful for the plaintiff or plaintiffs therein, or his, her, or their attorney, in cases where special bail is demandable by law, to issue forth, out of the court in which the suit or action shall or may be depending, another writ of *capias ad respondendum* or other process, against the said defendant or defendants, stating therein that he, she, or they, had obtained a personal discharge, but had been refused a final discharge under the said insolvent laws; and it shall and may be lawful for the sheriff, or other officer, to whom the said writ shall be directed and delivered, to arrest and take the body of the defendant or defendants, and him, her, or them, safely keep, until he, she, or they, shall give special bail in such suit or action, and there shall be the same proceedings on such new writ or process as if the said original writ had never been issued, or could have been had on the said original writ in case the personal discharge had never been granted.

No applicant who has obtained a personal discharge to be allowed to withdraw his petition, &c.

3. *And be it enacted*, That no applicant who shall have obtained a personal discharge from arrest upon any writ of *capias ad respondendum*, shall be allowed to withdraw his petition or application, unless he shall produce to the commissioners, a certificate from the clerk of the county court, that bail bond, and a power of attorney, has been filed in such suit or suits, or special bail entered thereon.

Persons not having obtained a final

4. *And be it enacted*, That in all cases where any applicant for the benefit of the insolvent law shall have received a personal discharge, and shall not have obtained a certificate of final dis-

charge, either in consequence of withdrawing his application or by reason of allegations filed against such applicant, or his not complying with the terms prescribed by law, or on any other account whatever, such person shall not be permitted again to apply to the commissioners, for the benefit of the several acts of insolveney, for the term of two years next after such personal discharge as aforesaid.

discharge, &c. not permitted again to apply, &c.

5. *And be it enacted*, That if allegations shall be filed against any petitioner for the benefit of the insolvent laws of this state, and the said allegations shall be found against such petitioner by the verdict of a jury, then such petitioner shall not thereafter be entitled, either to a personal discharge, or a final discharge, or to any benefit whatever, of the said insolvent laws.

If allegations filed, and found against petitioner by verdict of jury, not entitled to discharge.

6. *And be it enacted*, That in all cases now depending, or hereafter to be brought before the said commissioners, and in which they shall report unfavourably to the applicant or applicants for the benefit of the insolvent laws, they shall have power, and it shall be their duty, to transmit to the Clerk of Baltimore county court all deeds of assignment executed by any such applicant or applicants, and all such other papers relating to the estate of such applicant or applicants, and brought before them, as they may deem it proper to have preserved and recorded, and that it shall thereupon be the duty of the said clerk to record all such deeds and papers in his office, in the manner in which deeds for the conveyance of lands are now directed to be recorded, and to give certified copies thereof in like manner, which shall be evidence, as in case of other deeds; and the said clerk shall be entitled to receive such fees for recording the said deeds and papers, as are allowed by law for recording deeds in other cases, to be paid by the trustee out of the effects assigned to him; and in all such cases as are above mentioned, where the report of the commissioners shall be unfavourable to the applicant or applicants, the said commissioners shall cause the trustee to proceed, and it shall be his duty to proceed, in the execution of the trust, in the same manner, and subject to the same rules, regulations and restrictions, as if the report of the said commissioners had been favourable to such applicant or applicants.

Cases in which commissioners report unfavourably to applicants, papers to be transmitted to clerk of county court &c.

7. *And be it enacted*, That in every case now depending, or hereafter to come before the said commissioners, in which a permanent trustee shall be appointed, different from the provisional trustee, they shall cause a deed of transfer and assignment of, and for all the estate, property, rights, credits and effects, of the insolvent or insolvents, to be forthwith executed

Where permanent trustee is appointed, deeds of estate &c. to be executed to him.

January, 1819.

by the provisional trustee or trusstees, to the permanent trustee or trustees, and lodged with them among the papers belonging to the case in which it shall have been executed.

Provisional trustees to give bond, &c.

8. *And be it enacted*, That every provisional trustee to be appointed by virtue of the act to which this is a supplement, for the estate and effects of any applicant or applicants, for the benefit of the insolvent laws of this state, shall, before he acts as such, give bond, with good and sufficient security, to be approved by the said commissioners, for the performance of his trust, and for the transfer and delivery over of the said estate and effects to the permanent trustee or trustees to be appointed by virtue of the said act, and if any provisional trustee, so to be appointed, shall, on the appointment of a permanent trustee or trustees, as aforesaid, and on the order of the said commissioners to deliver over to such permanent trustee or trustees, the said estate and effects, on a day in the said order to be named, which order the said commissioners are hereby empowered and directed to make, fail or neglect to comply with such order, it shall be the duty of the said commissioners, and they are hereby authorized and required, to report such failure or neglect, with the order by them made as aforesaid on such provisional trustee, to Baltimore county court, or in the recess thereof to the chief judge of the said court, and the said court, or chief judge shall be, and hereby is thereupon authorized and required to proceed by attachment against such provisional trustee, as in cases of contempt, for compelling him to deliver over the said estate and effects, in conformity with the order aforesaid, or with such other and further order, as the said court or chief judge may make in that behalf; *Provided always*, that nothing herein contained shall be construed to protect the sureties of such provisional trustee against a recovery on the said bond, in case any part of the said estate or effects shall not be delivered over in pursuance of any order made, or attachment issued, by virtue of this act.

Proviso.

Allowance to commissioners to be first paid out of effects of applicant.

9. *And be it enacted*, That the allowance made to the commissioners by the law to which this is a supplement, together with all costs attending the application of any person or persons petitioning for the benefit of the same, shall be first paid out of the effects of said applicant, but no person shall be refused a hearing, or be prevented from receiving the benefit thereof, in consequence of the insufficiency of his or her effects to pay the same.

Cases pending at the pas-

10. *And be it enacted*, That all cases which shall be depending before the said commissioners at the time of passing this

act, shall be proceeded on in the same manner, as if this act had not been passed, except so far as relates to the recording of deeds or other papers, and to the execution of the trust, in cases where the report of the commissioners shall be unfavourable to the applicant or applicants for the benefit of the insolvent laws, and to proceedings against provisional trustees for compelling them respectively to deliver over to the permanent trustee or trustees the estate and effects of any insolvent debtor or debtors. *January*, 1819. sing of this act to be proceeded on as if this act had not passed.

CHAPTER CVIII.

An Act respecting the assent of Creditors to the Release of Debtors under the Insolvent Laws of this State. *January*, 1820.

1. *Be it enacted by the General Assembly* ———*, That all individuals, banking companies, or any corporate bodies, to whom any debt now is, or may hereafter be due, shall be capable, and each of them is hereby authorized and empowered, to give their assent respectively to the final release of any petitioner for the benefit of the act of assembly, entitled, An act for the relief of sundry insolvent debtors, passed at November session eighteen hundred and five, and its several supplements, without discharging, or in any wise affecting the right of such individual, banking company, or corporate body, to recover the debt or sum of money from which said petitioner shall be released, of any endorser or other person who may also be liable or bound for the payment of the same. Banking companies, &c. authorized to give their assent to final release, &c.

2. *And be it enacted*, That such assent of any banking company, or other corporate body, to the release of any petitioner for the benefit of the act of assembly aforesaid, and the supplements thereto, may be given by such company or corporate body, through the President of such banking company or corporate body, and the affidavit or certificate of such president, of the amount due any such company or corporation, shall have the same effect, and entitle such petitioner to the same relief, as is afforded by the insolvent laws of this state, when the said affidavit is made by a creditor assenting to a release of his own particular debt. Such assent may be given through president, &c.

3. *And be it enacted*, That so much of the fourth section of the act, entitled, A further additional supplement to the act, entitled, An act for the relief of sundry insolvent debtors, passed at November session, eighteen hundred and twelve, as requires Part of 4th section of an act repealed.

* The words "of Maryland" omitted in the engrossed law.

January, 1820.

an insolvent debtor to pay over or convey to his trustee or trustees sufficient in amount to pay fifty *per cent.* of his debts at the time of his second application, and also so much of the said section as requires the insolvent debtor, before he shall obtain a final release a third time, to pay over or convey to his trustee or trustees, estate sufficient in amount to pay seventy-five *per cent.* of his debts, at the time of his third application, be and the same are hereby repealed.

January, 1820.

CHAPTER CLXXXII.

A Further Supplement to the act, entitled, an act relating to Insolvent Debtors in the City and County of Baltimore.

Commissioners to appoint permanent trustee, &c.

1. *Be it enacted by the General Assembly of Maryland*, That from and after the passage of this act, it shall, and may be lawful for the commissioners of insolvent debtors in the city and county of Baltimore, at any time after an application made to them for the benefit of the insolvent laws, to appoint the permanent trustee required by the said laws, whenever a majority of the creditors in value, their agents or attorneys, shall nominate in writing, and recommend any person for that purpose, and upon such appointment, it shall not be necessary for the said commissioners, in giving notice of the personal discharge, and the time fixed for the final hearing, according to the provisions of the act, to which this is a supplement, to require the creditors to attend and nominate some person or persons to be appointed trustee or trustees for their benefit, but it shall be the duty of the said commissioners to state, in the said notice, that an appointment has been made by them in pursuance of the recommendation as aforesaid.

Not less than two of them to act upon any petition, &c.

2. *And be it enacted*, That not less than two of the said commissioners shall be authorized to act upon any petition for the benefit of the insolvent laws of this state, to appoint trustees, grant discharges, or generally to perform any of the functions reposed in the said commissioners by law, any thing in any former act to the contrary notwithstanding; *Provided always*, that this section shall not be construed to make void any proceedings heretofore rightfully had by the said commissioners, when less than two of the said commissioners may have acted upon any petition submitted to them.

Proviso.

CHAPTER CLXXXVI.

February, 1820.

An act to provide for the support and maintenance of Debtors actually confined in prison.

Creditors to pay sheriff 87½ cts, weekly for support of debtor, &c.

1. *Be it enacted by the General Assembly of Maryland*, That from and after the first day of March next, whenever any debtor, arrested on a *capias ad satisfaciendum*, issued by any justice of the peace of this state, or otherwise committed for the nonpayment of any judgment recovered before a justice of the peace of this state, shall be delivered, by the constable, to the custody of the sheriff, it shall be the duty of the creditors at whose instance such debtor shall be arrested or committed as aforesaid, to pay to the sheriff, within two days after the said prisoner shall be so delivered to the custody of the sheriff, the sum of eighty-seven and a half cents, for the support and maintenance in prison of the said debtor, and the like sum weekly thereafter, for the same purpose, so long as the said debtor shall be imprisoned at the suit of such creditor; and if default shall be made in any one of the payments herein before directed, and the said debtor shall be confined for debt, and for no other cause, it shall then be the duty of the sheriff forthwith, upon such default, to certify the same in writing, under his hand, to some justice of the peace of the county where such debtor shall be confined, in which certificate shall be set forth the day on which the said debtor was committed to the custody of the sheriff, and the payments made by the creditor for his support, if any, and the day on which default of payment as aforesaid was made, and upon the production of such certificate, to any justice of the peace aforesaid, it shall be the duty of such justice to endorse thereon an order to the sheriff to discharge such debtor from confinement, who shall thereupon be accordingly discharged by the sheriff; *Provided always*, that such discharge shall not preclude the creditor from proceeding afterwards, as often as the creditor shall think proper, against such debtor, by *fieri facias*, *capias ad satisfaciendum*, or otherwise, on the judgment aforesaid; and in case such proceeding shall be by *capias ad satisfaciendum*, the same shall be subject to the provisions herein before contained for the maintenance and support of such debtor; *And provided also*, that if any such debtor, while in actual confinement as aforesaid, shall be arrested on a *capias ad satisfaciendum* issued at the suit of any other creditor, or be otherwise committed for the nonpayment of any judgment, rendered by any justice of the peace, or by any county court of this state,

Provisos.

February, 1820.

or the nonperformance of any decree for the payment of money made by any court of equity in this state, it shall be lawful for the creditor, at whose instance the said subsequent arrest or commitment may be made, to pay for the support and maintenance of such debtor in prison, in the manner herein before directed, and in case such payments shall so be made, then the said debtor shall be detained in prison notwithstanding the default of the creditor at whose instance the said debtor was originally arrested or imprisoned.

When person is committed on writ from county court, &c. sheriff to notify creditor thereof, who shall pay, &c.

2. *And be it enacted*, That whenever any person, after the day herein first mentioned, shall be actually committed to or confined in goal on any *capias ad satisfaciendum*, issued out of any county court in this state, or the court of appeals of either shore, or any court of equity in this state, or shall be otherwise committed by any court of law or equity in this state, for the nonpayment of any money recovered against him by a judgment or decree, or shall be committed for want of special bail, it shall be the duty of the sheriff, to whose custody such debtor may be committed, immediately to notify, in writing, the creditor or creditors at whose instance such debtor shall be committed, or his or their attorney, that the said debtor is in actual confinement, specifying in such notice the suit and cause in and for which the said debtor hath been so committed; and it shall be the duty of the said creditor or creditors, within fourteen days, (exclusive of the day of notice,) after the notice shall be served as aforesaid, to pay to the sheriff the sum of two dollars and sixty-two and a half cents, and the sum of eighty-seven and a half cents weekly thereafter, for the support and maintenance in prison of the said debtor, so long as he shall be confined in prison at the suit or instance of such creditor or creditors; and if default shall be made in any of the payments directed by this section for the support and maintenance of the debtor as aforesaid, then the same proceedings shall be had as are directed in the first section of this law in cases where default shall be made in the payments therein mentioned, for the support and maintenance of an imprisoned debtor, the said proceedings to be subject to the provisions and conditions contained in the first section of this law.

Not to extend to persons convicted under insolvent law, &c.

3. *And be it enacted*, That the provisions herein before contained shall not be extended to any debtor who hath been or shall be convicted, on allegations filed against him under the act of assembly, entitled, An act for the relief of sundry insolvent debtors, passed at November session, eighteen hundred and five, and who may be confined in prison for any debt due or owing

from him before his application for the benefit of the said law, but whenever any person, so convicted, shall be committed or confined for any debt due or owing from him as aforesaid, or for the want of special bail in a suit already instituted, or hereafter to be instituted, for any such debt, it shall be the duty of the sheriff to support and maintain such debtor while in actual confinement, and he shall be paid therefor the same sum, and in the same manner, as is now allowed in cases where persons are confined in goal charged with the commission of felony or any other crime.

If prisoner should be discharged before money is expended, sheriff to pay it over to creditor.

4. *And be it enacted*, That if any prisoner shall be discharged from prison before the expenditure of any of the sums of money herein before directed to be paid to the sheriff for the support of such prisoner, rating the said expenditure at twelve and a half cents a day, it shall be the duty of the sheriff, on the discharge of said prisoner, to repay forthwith to the creditor or creditors the money so advanced and not expended.

Amount paid by creditor for support of debtor to be considered a preferred claim, &c.

5. *And be it enacted*, That the amount which may have been paid by said creditor or creditors, for the support of such prisoner, shall be considered as a preferred claim, and be first paid out of the effects of such prisoner, should he or she be finally released under the benefit of the insolvent laws of this state.

Sheriff to furnish daily wholesome provisions, &c.

6. *And be it enacted*, That it shall be the duty of the sheriff, out of the money so paid to him as aforesaid, to furnish daily to the debtor for whose support and maintenance the same shall be paid, wholesome provisions of the full value of twelve and a half cents, and if any sheriff shall neglect or refuse so to do, he shall, on indictment and conviction thereof in the county court of the county where the offence shall be committed, or in the City Court of Baltimore, if the offence shall be committed by the sheriff of Baltimore county, forfeit and pay to the state the sum of ten dollars for every such offence.

Section repealed.

7. *And be it enacted*, That the first section of the act of assembly, entitled, An act relating to the sheriff of Baltimore county, passed at December session eighteen hundred and eighteen, be and the same is hereby repealed.

Not to extend to any person for offence against the laws of the state.

8. *And be it enacted*, That nothing in this law contained shall be construed to extend to any person committed for any offence against the laws of this state, or for any fine imposed by any court or magistrate, for any offence against the laws of this state, or for the breach of any ordinance or by-law of any chartered town or city.

February, 1821.

CHAPTER CXCIV.

A Further supplement to an act, entitled, An act for the relief of sundry Insolvent Debtors, passed at November Session, eighteen hundred and five.

Trustee may be discharged.

1. *Be it enacted by the General Assembly of Maryland*, That in all cases where a trustee hath been, or hereafter shall be, appointed by virtue of the act to which this is a supplement, or by virtue of the act, entitled, An act relating to insolvent debtors in the city and county of Baltimore, it shall and may be lawful for the said trustee, at any time after his appointment, to be discharged from his trust; *Provided*, That the said trustee shall petition the county court of the county in which he was originally appointed, setting forth his desire to be released from the further execution of the said trust, and in all other respects comply with the provisions of this act; *And provided also*, That it shall not be lawful for the said court to discharge any trustee, as herein before mentioned, unless they shall be satisfied, by competent testimony, that it is for the interest of the creditor of such insolvent, that the said trustee should be so discharged, and unless the said trustee shall also produce the assent, in writing, of two-thirds in value of the said creditors to such discharge.

Provisos.

County court upon such discharge to appoint another, &c.

2. *And be it enacted*, That it shall be the duty of the said county court, upon such discharge being made thereupon, to appoint another trustee into whose possession shall be delivered all the property and effects, if any, belonging to the estate of the insolvent debtor, which were originally conveyed to the trustee petitioning as aforesaid, or so much thereof as may then be remaining in his possession, subject nevertheless to such exceptions as may hereinafter be excepted, and the said petitioning trustee shall thereupon, under the direction of the court, make the proper conveyance and assignments of the same.

Upon transfer of property, &c. trustee to be discharged, &c.

3. *And be it enacted*, That when the said trustee, so petitioning as aforesaid, shall make the said conveyances and assignments of the property conveyed to him as trustee, or so much thereof as may then be remaining in his possession, subject to such exceptions as may hereinafter be excepted, and the said trustee, thus substituted in his place, shall certify that he has received possession of the said property, producing at the same time a schedule thereof, the said certificate and schedule to be filed in the clerk's office of the county, and that he has given bond in pursuance of the directions of this act, then the said trustee, so petitioning as aforesaid, shall thereupon be discharg-

ed from the execution of any further or future duty or obligation arising out of his appointment as trustee for the creditors of the said insolvent debtor.

Trustee substituted, to give bond, &c.

4. *And be it enacted*, That the said trustee, so substituted in the place of the trustee so petitioning as aforesaid, shall, under the direction of the court, give bond for the same purpose, and in the same manner, that the original trustee ought to have done, under the act to which this is a supplement; which said bond shall be recorded and certified, according to the provisions of the said act, and shall, in the same manner, be good evidence in any court of law or equity in this state, and the said trustee shall, in all other respects, comply with the provisions of the said act relating to the trustee as aforesaid.

Trustee may petition court to surrender his trust, &c.

5. *And be it enacted*, That it shall and may be lawful for any trustee, appointed by virtue of the act to which this is a supplement, or by virtue of the act, entitled, An act relating to insolvent debtors in the city and county of Baltimore, or by virtue of this act, to petition the county court of the county in which he was appointed, setting forth his desire to surrender his said trust, at the same time exhibiting the assent in writing of two-thirds of the creditors in value, expressing their willingness that the said trustee should surrender as aforesaid; and it shall thereupon be the duty of the said county court, provided they shall believe that the said surrender would not be prejudicial to the interests of the creditors, to grant permission to the said trustee to surrender up his said trust to the said county court, and the said trustee shall forthwith, upon such permission, under the direction of the court, return into the possession of the insolvent debtor, from whom he originally received the same, all the property and estate conveyed to him by the said insolvent debtor, or so much thereof as may then be remaining in his possession, subject nevertheless to such exceptions as may hereinafter be excepted, and it shall be the duty of the said trustee, so surrendering as aforesaid, to return to the said county court a schedule of such property so surrendered, and thereupon the deed, originally conveying the same to the said trustee, shall thenceforth be deemed, and taken, to be void, as regards the said property so returned, and upon the said surrender being made, and schedule returned as aforesaid, the said trustee shall thereupon be discharged from the execution of any further or future obligation or duty arising out of his appointment as trustee for the creditors of said insolvent debtor.

Court may allow trustee surrendering trusts, to retain portion of estate, &c.

6. *And be it enacted*, That the county court shall, in their discretion, allow the trustees assigning or surrendering their trusts

February, 1821.

by virtue of this act, to retain such portion of the said trust estates, as may be necessary for the payment of any debts due, or to become due, by the said trustees, in virtue of their appointments as trustees of the said insolvent debtors, and also for the payment of such commission, not exceeding eight *per cent.* as the court may deem a reasonable compensation to the said trustees for their services.

Any surplus remaining in his hands to be accounted for, &c.

7. *And be it enacted*, That if any surplus should remain in the hands of the said trustees, after they shall have paid the debts, and retained the commission for which such allowance was made, they shall, under the order and direction of the county court, account for the same, and pay the same over, in case of a surrender of the trust, to the said insolvent debtor, or in his absence to the said court, who shall hold the same, subject to the order of the said insolvent debtor, and in case of an assignment of the trust, as provided by this act, to the trustee to whom such assignment was made.

CHAPTER CCL.

February, 1822.

A further supplement to the act, entitled, An act relating to Insolvent Debtors in the City and County of Baltimore.

Petitioners not appearing.

SEC. 1. BE IT ENACTED *by the General Assembly of Maryland*, That in all cases of applications for the benefit of the insolvent laws before the commissioners of insolvent debtors, for the city and county of Baltimore, or before Baltimore county court, in which the petitioner may fail to appear on the days required by law, that the said commissioners, or Baltimore county court, as the case may be, shall have power, in their discretion, if they believe such failure not to have been designed for fraudulent purposes, to continue the case of such petitioner, upon their docket, until some other convenient day, whereof such notice shall be given by the said petitioner as they shall direct.

May prosecute.

2. AND BE IT ENACTED, That in all cases in which such failure may have heretofore taken place, (provided the said commissioners, or Baltimore county court, shall be satisfied it did not arise from a fraudulent design on the part of the petitioner,) the said petitioner shall be, and he is hereby authorized to prosecute a new petition for the benefit of said insolvent laws.

CHAPTER CII.

January, 1823.

A supplement to the act, entitled, "An act relating to insolvent debtors in the city and county of Baltimore."

Second petition.

BE IT ENACTED *by the General Assembly of Maryland*, That any applicant for the benefit of the insolvent laws of this state, who hath been, or may hereafter be, reported against, by the commissioners of insolvent debtors for the city and county of Baltimore, on the ground of his not having acted, in the opinion of said commissioners, fairly and bona fide, be, and he is hereby authorized to prosecute at any time, a second petition for the benefit of said laws, before the said commissioners, upon all the other terms and conditions of said laws, notwithstanding the unfavorable report made upon his first petition: *Provided*, that before the said commissioners shall act upon the said second petition, they be satisfied that the applicant did not, at his first application, retain any property or estate whatsoever, then belonging to him, with an intention to defraud his creditors, and that he then acted fairly and bona fide; *And provided also*, that the said commissioners shall not report favorably upon any application under this law, unless they be satisfied, that on application, the applicant does not fraudulently retain any property or estate whatsoever then belonging to him, and that he then acts fairly and bona fide.

Provisos.

Interrogatories.

II. *And be it enacted*, That it shall be the duty of said commissioners to require of every applicant under this law, to answer again, at the usual time, on oath or affirmation, all the interrogatories filed against him on his previous application, as well as any others that a creditor or creditors may file against him, on his application under this law.

CHAPTER CXXII.

February, 1825.

A further supplement to an act, entitled, an act for the relief of sundry insolvent debtors, passed at November session, eighteen hundred and five, chapter one hundred and ten.

Discharged from custody in certain cases.

BE IT ENACTED *by the General Assembly of Maryland*, That any insolvent debtor who has obtained or may obtain a personal discharge under the original act, and the supplements thereto,

February, 1825.

and to which this act is a further supplement, shall be, and he or she is hereby declared to be entitled to be discharged from custody, upon any attachment or other process, which has been, or may be issued against him or her to enforce the execution of any decree which has been passed, or may be passed, in the court of chancery, or in any county court, sitting as a court of equity, against such debtor, for any debt or claim contracted before his discharge, under said insolvent laws; and it shall be the duty of the chancellor, or any judge of the county court, as a court of equity, as the case may be, to order and direct the discharge of such debtor from the custody aforesaid.

Produce copy of discharge.

II. *And be it enacted*, That such debtor shall not be entitled to such last mentioned discharge, unless he or she produces to the chancellor, or the county court, as the case may be, a copy of his or her said personal discharge, under said insolvent laws, certified by the clerk of the court granting said discharge, and attested by the seal of said court.

March, 1825.

CHAPTER CCV.

An act relating to Insolvent Debtors,

Security for appearance conditionally dispensed with.

BE IT ENACTED *by the General Assembly of Maryland*, That from and after the passage of this act, any judge, of any county court, justice of the orphans' court, or the commissioners of insolvent debtors, for the city and county of Baltimore, as the case may be, be, and they or any of them are hereby authorized and empowered to receive and entertain the application of any insolvent debtor, for the benefit of the insolvent laws of Maryland, without requiring from the said insolvent debtor the usual security for his or her appearance: *Provided always*, that the said insolvent debtor shall not be discharged from custody, until his or her application shall have been finally heard and decided: And provided also, that the said insolvent debtor shall, in all other respects, conform to the requisitions of the insolvent laws of this state, except as is hereinafter provided.

Proviso.

Residence conditionally dispensed with.

II. *And be it enacted*, That upon any application, by a citizen of another state, for the benefit of the several acts of Assembly of this state, passed for the relief of insolvent debtors, the judge or judges, or commissioners of insolvent debtors, for the city and county of Baltimore, as the case may be, to whom such application is made, are hereby authorized and required to extend to the petitioner, the benefit of the said several acts, to the same

extent that he would have been entitled had he been a citizen residing in this state for two years preceding such application; *Provided*, that the judge or judges or commissioners, for the city of Baltimore, as the case may be, shall be satisfied that the petitioner did not come to this state with the intention of availing himself of the benefit of this act, or with a view of defrauding his creditors: And provided also, that the said insolvent debtor, shall comply, in all other respects, with the terms and conditions of the said insolvent law.

Repealed by 1826, c. 253.

Proviso.

III. *And be it enacted*, That in all applications for the benefit of the insolvent laws of this state, which may be hereafter made to the commissioners of insolvent debtors for the city and county of Baltimore, the said commissioners, or any one of them, shall be authorized, and the said commissioners, or some one of them are hereby required to administer to the petitioning debtor, the following oath or affirmation, as the case may be: "I, A. B. do swear, or solemnly and truly declare and affirm, that I will deliver up, convey, and transfer to my creditors, in such manner as the commissioners of insolvent debtors for the city and county of Baltimore shall direct, all my property, that I have, or claim any title to, or interest in, and all debts, rights and claims, which I have, or am any way entitled to, in possession, remainder, or reversion, (the necessary wearing apparel and bedding of myself and family excepted) and that I have not directly or indirectly, at any time, sold, conveyed, lessened, or disposed of, for the benefit of any person or persons, or entrusted any part of my moneys or other property, or debts, rights or claims, thereby to defraud my creditors or any of them, or to secure the same to receive or expect any profits, benefits, or advantages thereby."

Oath required of insolvent.

IV. *And be it enacted*, That in case any such insolvent debtor shall at any time hereafter, upon an indictment found in the city or county court of the city or county in which such debtor may reside, or in the city or county where such oath or affirmation, shall have been taken or administered, be convicted of wilfully, falsely and corruptly swearing, or affirming, to any matter or thing to which he shall swear or affirm by virtue of this act, he shall suffer as in case of wilful and corrupt perjury, and be forever debarred from any benefit of the insolvent laws of this state.

False swearing therein made perjury.

5. *And be it enacted*, That if upon the answer of any insolvent debtor to any interrogatories, or if upon the trial of any issue or issues by a jury, upon allegations which may be filed against any such debtor, such debtor shall be found guilty of any fraud or

When fraud is proved insolvent debarred and costs provided for.

March, 1826.

deceit of his creditors, the county court, in which such interrogatories or allegations may or shall be filed, shall give judgment for the creditor or creditors preferring such interrogatories, or allegations against such insolvent debtor, for his reasonable costs and charges in that behalf sustained, and such insolvent debtor shall be debarred from any benefit of the insolvent laws of this state.

Appeal granted.

VI. *And be it enacted*, That upon the hearing of any allegations which may hereafter be filed against any insolvent debtor in any county court, the said insolvent may have a right to appeal from any opinion of the said court, to the court of appeals of the eastern or western shore of this state, as the case may be, and the said appeal shall operate as a supersedas upon any judgment rendered in pursuance of the said opinion: *Provided*,

Provisos.

The said insolvent debtor shall give bond with security, to be approved of by the court, to the creditor or creditors who may have filed the said allegations, with condition to the following effect: that if the said insolvent debtor (the party appellant) shall not cause a transcript of the record and proceedings of the said opinion and judgment thereupon rendered, to be transmitted to the next court of appeals, to be holden for the western or eastern shore, as the case may be, and prosecute the said appeal with effect, or satisfy and pay to the said creditor or creditors (so filing the said allegations) his, her, or their executors, administrators or assigns, in case the said opinion and judgment should be affirmed, as well the debt or claim of the said creditor or creditors with legal interest thereon and costs, as also all costs that may be awarded by the court of appeals; or render himself in execution upon any capias ad satisfaciendum which may be issued upon the said judgment, in case the said opinion and judgment shall be affirmed, then the said bond to be, and remain in full force and virtue, otherwise of no effect.

Appeal granted retrospectively.

VII. *And be it enacted*, That the right of appeal as herein before provided in all cases of allegations against an insolvent debtor, which may hereafter occur, is hereby extended to all cases of allegations which have been filed or decided since the first day of January, eighteen hundred and twenty-three.

Provisional trustee—bond —deed.

VIII. *And be it enacted*, That from and after the passage of this act, it shall be the duty of any county court, or of any judge of any county court, or of any justice of the orphans' court, to whom application may be made for the benefit of the insolvent laws of this state, by any person or persons whatsoever, immediately thereupon to appoint a provisional trustee for the creditors of the said applicant; and the county court, judge or jus-

tice, as the case may be, shall not grant a personal discharge to the applicant until the said provisional trustee, so to be appointed, as aforesaid, shall give bond with security, to be approved of by the said county court, judge or justice, as the case may be, conditional for the faithful discharge of his trust, and until the said applicant shall execute, to the said provisional trustee, a good and sufficient deed for all his estate, both real and personal, the necessary wearing apparel and bedding of himself and family excepted, for the benefit of the creditors of the said applicant, and until the said provisional trustee, so to be appointed, shall certify in writing to the said county court, judge or justice, as the case may be, that he is in possession of all the estate of the said applicant mentioned in his schedule. *March*, 1826.

IX. *And be it enacted*, That nothing in this act contained shall be construed to prevent the appointment of any permanent trustee for the benefit of the creditors of any insolvent debtor in like manner as permanent trustees are now appointed. Not to prevent appointment of permanent trustee.

X. *And be it enacted*, That upon the appointment of any permanent trustee it shall be the duty of the said provisional trustee to execute a good and sufficient deed for the real and personal estate of the said insolvent debtor, except as is herein before provided, to the said permanent trustee, and to deliver over to the said permanent trustee all the real and personal estate of the said insolvent debtor, except as aforesaid, for the benefit of his creditors. Transfer of trust.

XI. *And be it enacted*, That any thing in any other act of assembly contained, which is inconsistent with the provisions of this act, be, and the same are hereby repealed. Acts inconsistent herewith repealed.

CHAPTER CCLIII.

An Act to repeal a part of the act therein mentioned, relating to Insolvent Debtors, in the city and county of Baltimore. *March*, 1827.

Be it enacted by the General Assembly of Maryland, That the second section of the act, entitled, An act relating to insolvent debtors, passed December session, one thousand eight hundred and twenty-five, chapter two hundred and five, be, and the same is hereby repealed. Part of act repealed.

CHAPTER LXX.

February, 1828.

A Further additional supplement to the act, entitled, An act for the relief of sundry insolvent debtors.

Trustee to be appointed, and bond— and certify he has the insolvents property in possession.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That from and after the passage of this act, it shall be the duty of any county court, or of any judge of any county court, or of any justice of the orphans' court, to whom application may be made for the benefit of the insolvent laws of this state, by any person or persons having resided in this state two years next preceding the application, immediately thereupon, to appoint a trustee for the benefit of the creditors of the said applicant or applicants, and the county court, judge or justice, as the case may be, shall not grant a personal discharge to the said applicant or applicants, until the trustee, so appointed as aforesaid, shall give bond, with security to be approved, to the state of Maryland, in such penalty as the said court, judge or justice, may prescribe, conditioned for the faithful discharge of his trust; and until the said applicant or applicants shall execute, to the said trustee, a good and sufficient deed of conveyance, for all his estate, real, personal and mixed, (the necessary wearing apparel, and bedding of himself or themselves, and his, or their families excepted,) for the benefit of the creditors of the said applicant or applicants; and until the trustee so appointed, shall certify in writing, to the said county court, judge or justice, as the case may be, that he is in possession of all the estate of the applicant or applicants, mentioned in his or their schedule.

Trustee empowered to collect.

SEC. 2. *And be it enacted*, That the said trustee, so appointed as aforesaid, shall have power and authority, in his own name, or in the name or names of such applicant or applicants, to sue for and collect, all debts and demands, due and owing to the said applicant or applicants, and to give and execute receipts, acquittances, or releases for the same.

Trustee to sell property and distribute proceeds.

SEC. 3. *And be it enacted*, That it shall be the duty of the said trustee, upon such notice and terms as may be prescribed by the said county court, judge or justice, granting a personal discharge to the said applicant or applicants, to sell and dispose of, at public auction, all the said estate, real, personal and mixed, of the said applicant or applicants, to be conveyed to him as aforesaid, whether the application of said petitioning debtor or debtors, be prosecuted to a final hearing or not, and the proceeds of said sale to distribute amongst the creditors of the said applicant or applicants, agreeably to the provisions of the seventh section of the act, to which this is a further additional supple-

ment, after deducting therefrom the commissions to be allowed him, as is likewise prescribed in the tenth section of the said original act. *February*, 1828.

Convey title.

SEC. 4. *And be it enacted*, That said trustee shall have authority to convey and assure to any purchaser or purchasers, and to his, her, or their heirs, any estate, real, personal or mixed, which he may sell to him, her, or them, agreeably to the provisions of this act.

Trustees bond liable for default.

SEC. 5. *And be it enacted*, That upon the failure of any trustee, (to be appointed agreeably to the provisions of this act) duly to discharge his trust, his bond may be put in suit at the instance, and for the use of any creditor or creditors of the petitioning debtor, or other person or persons interested in the faithful execution thereof; and in every such case a copy of the bond of said trustee, under the hand and seal of the clerk of the court, to which the application of said insolvent may be returnable, shall be taken and received in evidence, as fully as if the original bond were produced.

Final discharge in case no interrogatories are filed.

SEC. 6. *And be it enacted*, That if at the time of the final hearing of his or their application in the county court, to which his or their petition may be returnable, no interrogatories or allegations shall be filed, or if filed, shall have been satisfactorily answered, or decided in favor of such applicant or applicants, that then it shall be the duty of the said court to extend to the said applicant or applicants, a final discharge, without the assent of any of his or their creditors.

Voluntary confession of judgment declared an undue preference.

SEC. 7. *And be it enacted*, That the voluntary confession of any judgment, in favor of any creditor or creditors, security or securities, made by any person or persons, with a view, or under an expectation of being or becoming an insolvent debtor, shall be, and the same is hereby declared to be, an undue and improper preference, to such creditor or creditors, security or securities, within the true intent and meaning of the ninth section of the act, to which this is a further additional supplement.

Property not returned, subject to execution.

SEC. 8. *And be it enacted*, That all the property of the petitioner, real, personal and mixed, not mentioned and included in his schedule, be subject to execution and attachment, in the same manner his property was subjected prior to the time of his petitioning for the benefit of the insolvent laws of this state.

Acts inconsistent herewith repealed. Baltimore city and county exempt.

SEC. 9. *And be it enacted*, That all such acts, and parts of acts of Assembly, as may be inconsistent with the provisions of this act, be and the same are hereby repealed: *Provided*, that nothing in this act contained, shall be construed to extend to the city and county of Baltimore.

February, 1829.

CHAPTER LXIII.

A Further Supplement to the act, entitled, An act for the relief of sundry Insolvent Debtors, passed at November session, eighteen hundred and five.

Debtor obtaining final discharge under original act may be discharged, &c

1. *Be it enacted by the General Assembly of Maryland*, That any insolvent debtor, who has obtained, or may obtain, a personal or final discharge under the original act, and supplements thereto, to which this is a further supplement, shall be entitled to be discharged from custody upon any attachment, or other process, which has been, or may be issued against such debtor, to enforce the execution of any order for the payment of money, which may be passed by the court of chancery, any county court sitting as a court of equity, or orphans court, against such debtor, for any debt or claim contracted, or liability incurred, for such money, before the said discharge of such debtor; and it shall be the duty of the chancellor, of the county court, or orphans court, out of which such process may issue, or any judge thereof in the recess of the said court, upon motion, to discharge said debtor from custody, as aforesaid; *Provided*, that before any such debtor shall be entitled to his discharge as aforesaid, he shall produce to the chancellor, county court, or judge thereof, or orphans court, as the case may be, a copy of said discharge, certified by the clerk of the court in which the said discharge may be lodged or recorded, and under the seal thereof; *And provided also*, that this act shall not extend to any attachment or process which may issue to compel the payment of any fine, amercement or penalty, which may be imposed by said chancellor, county court, or orphans court.

Provisos.

CHAPTER XXXI.

January, 1830.

A further additional supplement to the act, entitled, "an act for the relief of sundry Insolvent Debtors."

Costs.

Be it enacted by the General Assembly of Maryland, That from and after the passage of this act, it shall and may be lawful for any county court, in which a petition for the benefit of the Insolvent Laws of this state may be depending, upon the answer of any Insolvent Debtor to interrogatories exhibited, or upon the trial of any issue or issues by a jury upon any allega-

gations which may be filed against him, or upon the continuance of such petition to any term subsequent to that to which such interrogatories may be exhibited or allegations filed, to award to the creditor or creditors exhibiting such interrogatories, or filing such allegations, or to the petitioner, his or their reasonable costs, in like ample manner as they are now authorized to do, in all other cases depending in said courts. *January*, 1830.

CHAPTER CCVIII.

February, 1830.

A supplement to the act entitled, an act relating to Insolvent Debtors in the city and county of Baltimore.

Trial of charges of fraud.

Section 1. *Be it enacted by the General Assembly of Maryland*, That in all cases now, or which may hereafter be depending before the Commissioners of Insolvent Debtors for the city and county of Baltimore, in which said commissioners shall make an unfavorable report to Baltimore county court, against any petitioner for the benefit of the insolvent laws of this state, it shall be, and is hereby made the duty of said court, to which said report shall be made, if thereto requested by such petitioner, fully to examine into the case of such petitioner, and if there be any charges of fraud within the contemplation of said insolvent laws, against him, to cause an issue or issues to be framed in a summary way, without the form of an action, to determine the truth of the same, such [issue] or issues to be tried by a jury.

Belief thereon.

Sec. 2. *And be it enacted*, That if upon such examination by the court, they shall be of opinion that the petitioner is entitled to the benefit of said insolvent laws, or if, where an issue or issues are framed, the finding of the jury is in favor of the petitioner, he shall have granted to him the benefit of said laws, notwithstanding the unfavorable report of the commissioners, in like manner, as if such report had been in favor of said petitioner.

Trustee invested with all right, &c.

Sec. 3. *And be it further enacted*, That the appointment of a provisional trustee or trustees, under the act to which this is a further additional supplement, when such trustee or trustees shall have filed his or their bond, with security, as required by law, shall vest in such trustee or trustees, all the estate, property, effects, rights, and claims, of the insolvent debtor, and shall operate as an authority to such trustee or trustees, to take possession, for the benefit of the creditors of such insolvent, of all

property, estate and effects, books, papers, accounts, notes and evidences of debt, of such insolvent, without cessity of such insolvents executing a deed thereof, and tle such trustee or trustees, to use all legal means for the ery thereof.

AN

INDEX

TO THE

INSOLVENT LAWS OF MARYLAND,

ARRANGED CHRONOLOGICALLY,

From 1805 to 1830, inclusive.

APPLICANTS.

1805 c. 110. § 2 — By 1805, persons specially and individually named, to be in actual confinement, shall satisfy the county court by competent testimony, that he or she has resided two years in the state of Maryland, prior to the passage of this law.

§ [redacted] — *If applicant has not been two years a resident, he or she shall produce to the county court, at the time his petition is presented, the assent, in writing, of two-thirds of his creditors in value; provided, that non-resident foreign creditors, having no agent or attorney here empowered to act on their behalf, shall not be deemed, for the purpose of such assent, as creditors.

§ 5 — Upon executing and acknowledging to his trustee the deed prescribed, and delivering in accordance thereto, his property, &c. and upon satisfying the county court of the same, by certificate of trustee, the court may order his discharge from all liabilities in every capacity for claims accruing previous to the passage of this act, or to his application, and by virtue of such order, he shall be discharged, provided he has not been guilty of a breach of the law of the state, or have been fined or liable on that account so to be, and provided, any property he shall thereafter acquire otherwise than by purchase, shall be liable to the payment of his debts, and provided that the discharge of such debtor do not operate to discharge any other.

§ 11 — If applicant be imprisoned at the time of exhibiting his petition, the county court, or any judge thereof, may order the sheriff or other officer in whose custody he shall be, to bring him before such court or judge, at a certain time appointed in the order, to take the oath, or affirmation, before mentioned, and the sheriff, or other officer, shall obey such order, and be entitled to a preference after payment, of all liens on the debtors' estate, to all other creditors in the payment of his account against said debtor for legal fees, &c. The judge or court may discharge the debtor from imprisonment, and appoint a time for his appearance before the court, to answer interrogatories, &c. on not less than three months' notice, such discharge from imprisonment not to operate as a discharge of any of the debts of such imprisoned debtor—he shall also, if

*Throughout that part of this Index which contains a compendium of the acts prior to the abolition of imprisonment of females for debt, the word "his" will be generally used instead of "his or her."

Applicant. required, give bond at the time of his discharge with security for his appearance at the time appointed: upon refusal to give bond, shall remain in prison, until his application be decided on.

§ 13. Arrested or imprisoned on any process, &c. for any debt, damages, or costs contracted, owing or growing due before the passage of this act, or before application for the benefit thereof—the court, upon application, shall discharge [illegible] or on motion; and on his common appearance being entered, without special bail. Such discharge not to acquit any other from such debt.

§ 16. Neglecting to execute a deed of his property to trustee within one month after the appointment of trustee and bond given by him, shall be excluded from the benefit of this act.

§ 21. To give two months previous notice of his application, in one newspaper printed in Baltimore, and in some other newspaper printed near to the residence of applicant, and give such notice by advertisement set up at the most public places in his county.

1806. c. 98. Need not have resided in Maryland two years previous to the passage of act of 1805, c. 90, but previous to his application.

1807. c. 150. The loss by gaming of one hundred dollars at any one time, must have been within three years preceding application.

§ 3. May be discharged by a single judge, if actually imprisoned at the time of his application.

§ 4. Release of, may be signed by executors, administrators, trustees and corporate bodies, whenever they shall deem the same right and proper.

1808. c. 71. May be discharged without the assent of two-thirds of the creditors, and without previous notice: such discharge being of the person only, such assent requisite for final discharge.

1812. c. 77. Complying with all the terms required, except that of the

§ 3. assent of two-thirds of the creditors, shall be personally discharged, except when interrogatories or allegations have been filed and not satisfactorily answered.

Entitled to the benefit of the insolvent laws not oftener than once in two years—at his second time of discharge he

1812. c. 77. must pay fifty cents in the dollar, and seventy-five cents the

§ 4. third time of his discharge.

This requisition of the fourth clause repealed by act of 1820, c. 108.

§ 5. Being unable to produce to the court the written assent of two-thirds of his creditors: and no interrogatories or allegations being filed against him, or having been satisfactorily an-

plicant. swered or favourably decided, and the applicant alleging, in writing to the court, within six months after the time of final hearing, his inability to obtain such assent, and that it is vexatiously and unreasonably withheld, the county court shall have power to examine summarily into the truth and merits of such application, and if they believe such assent is withheld as stated, they may fully release such debtor.

4. c. 122. Withdrawing his petition, or upon the same being dismissed or decided against the applicant, a *sci. fa.* not necessary to revive a judgment which may have been suspended by such petition: process of execution may issue as if there had been no such suspension.

The time intervening, during such suspension, shall not be computed on a plea of limitation.

6. c. 221. Applicants living in the city or county of Baltimore, to be referred to the commissioners of insolvents.

The property of——, together with his books, papers, &c. to be delivered up to the provisional trustee appointed by the commissioners.

To give bond with security for his appearance, to answer interrogatories and allegations; and upon the commissioners certifying that the provisional trustee is in possession of the insolvent's property, the court or judge, shall grant him a personal discharge.

Cases of —— to be diligently examined by the commissioners.—May be compelled to answer on oath, interrogatories and allegations, and if he shall appear to have complied with the terms and conditions of the insolvent laws, &c. the commissioners shall report the same to Baltimore county court, and return the schedule and all proceedings had before them, to the office of the Clerk of Baltimore county court, to be recorded, and the judges of said county court shall thereupon grant a full and final discharge: Provided, such final discharge shall not be granted, if allegations be filed by any creditor at least ten days before the day fixed for the final discharge, and until such allegations shall have been heard and determined in favor of the insolvent, he shall not be discharged—and provided, nothing herein contained shall be so construed, to deprive the creditor or creditors of the right to file allegations at any time within two years from the period of such discharge.

All deeds, conveyances, transfers, &c. made by applicants, with a view to an undue or improper preference of creditors or securities, declared void, and the property so attempted to be transferred, vested in the trustee.

Applicants. Applicant not to be precluded from the benefit of the insolvent laws on account of having given such preference.

1817. c. 183. An imprisoned debtor may hereafter, immediatety upon his confinement, make application by written petition to any judge of the orphans' court of the county in which he may be imprisoned, for a discharge from confinement, and said judge hereby is invested with the same power as is exercised by a judge of the county court to grant such discharge, upon the applicant's giving bond with security, and on a penalty, to be approved and preserved by such judge, for his appearance before the county court of said county, at a time appointed by said judge for a hearing before said court on his petition, according to the provisions of 1805, c. 110,—said judge entitled to one dollar for his trouble, payable by the debtor.

Any person arrested on ca. ad respond. shall obtain a personal discharge from the commissioners, according to the insolvent laws, and shall not obtain a final discharge under said laws, in such case if any suit or action be depending against such person in which complaint, appearance had been entered, it shall be lawful for the party plaintiff, or the attorney of the same, in cases where special bail is demandable by law, to issue another writ of ca. resp. or other process against such insolvent, stating therein the impetration of the personal, but refusal of the final discharge of defendant. The sheriff or other officer, to whom such writ may be directed, may arrest such defendant, &c. till special bail be given, and other proceedings, as if no personal discharge had been granted.

1819, c. 84. § 2

§ 3 An applicant having obtained a personal discharge from arrest under ca. ad. resp. shall not be allowed to withdraw his petition or application, unless he produce to the commissioners a certificate from the Clerk of the county court, that bail bond and power of attorney, hath been filed in the suit or special bail entered thereon.

§ 4 In all cases, from whatever causes, of applicant's not obtaining final discharge, he shall not apply again for the term of two years, next after the personal discharge.

§ 5 If allegations be filed, and found against any petitioner, by verdict of a jury, such petitioner shall not thereafter be entitled to either personal or final discharge or any other benefit.

§ 9 The estate of —— liable first to the payment of the commissioners allowance and costs: but not to be refused a hearing or the benefit because of the insufficiency of the estate for the payment of said allowance and costs.

1821, c. 250. Persons applying to the commissioners of insolvent debtors

Applicants. for the city and county of Baltimore, or to Baltimore county court, for the benefit of the insolvent laws, and failing to appear on the day, by the said court or commissioners appointed, may in the discretion of the court, &c. have their cases continued on the docket, said court, &c. being satisfied that their non-appearance was not designed for fraudulent purposes.

1822, c. 102. Any applicant for the benefit, &c. who has been, or may hereafter be, reported against by the commissioners of insolvent debtors, &c. on the ground of his not having acted in the opinion of the commissioners, fairly and bona fide, may prosecute at any time thereafter a second petition, for the benefit, &c. before said commissioners, upon all the other terms and conditions of the insolvent laws, notwithstanding such unfavorable report upon the first petition.—Provided, that before the commissioners act upon such second petition, they be satisfied that the applicant, did not, at the time of his first application, retain any property or estate, whatsoever then belonging to him with an intent to defraud his creditors, and that he then acted fairly and bona fide, and provided, such commissioners shall not report favorably upon any application under this law, unless they be so satisfied as above specified.

§ 2 Every applicant under this law, shall be required to answer again at the usual time, on oath or affirmation, all the interrogatories filed against him on his previous application, as well as any others filed against him on his application under this law.

1825, c. 122. Any insolvent who has obtained a personal discharge under the insolvent laws, shall be, and he is hereby declared to be entitled to be discharged from custody upon any attachment or other process, which may be issued against him to enforce the execution of any decree which may be passed in the Court of Chancery, or in any county court, as a court of equity, against such debtor, for any debt or claim contracted before his discharge, under the insolvent laws: and it shall be the duty of the Chancellor, or of any county court, as the case may be, to order and direct the discharge of such debtor from custody.

§ 2 He shall not be entitled to such discharge, unless he produce to the Chancellor or court, &c. a copy of his personal discharge under the said insolvent laws, certified by the Clerk of the court, granting such discharge, and attested by the seal of such court.

1825, c. 205. Any judge of any county court, justices of the orphans' court, or the commissioners of insolvent debtors, for the city

Applicants.

1825.

and county of Baltimore, as the case may be, may receive and entertain the application of any insolvent, for the benefit of the insolvent laws, &c. without requiring from said insolvent, the usual security for appearance; provided, always, that said insolvent, shall not be discharged from custody until such application shall have been finally heard and determined, and that said insolvent shall, in all other respects, conform to the requisitions of the insolvent laws, except as is herein after provided.

§ 2 Repealed by act of 1826, c. 253.

§ 3 In all applications which may hereafter be made to the commissioners of insolvents, for the City and county of Baltimore, the said commissioners or any one of them shall administer to the applicant the oath—(see the act at large, p.15.)

§ 4 In case any insolvent, upon an indictment found in the city or county court, of the city or county, in which such debtor may reside, or in which the aforegoing oath shall have been taken, be convicted of wilfully, falsely, and corruptly, swearing or affirming to any matter or thing, to which he shall swear or affirm by virtue of this act, he shall suffer as in case of wilful and corrupt perjury, and be forever debarred from any benefit of the insolvent laws of this state.

§ 5 If any applicant upon answer to interrogatories, or by issue found, be proved guilty of fraud or deceit towards his creditors, judgment shall be given for the creditor preferring the interrogatories, &c. for his reasonable costs and charges, and such insolvent shall be debarred from any benefit of the insolvent laws of this state.

§ 6 The applicant has a right of appeal to the court of appeals of his shore, from the opinion of any county court upon a hearing of the allegations filed against such insolvent. Such appeal to operate as a supersedeas upon any judgment rendered in pursuance of said opinion—Provided, the insolvent give bond with security to be approved by the court, to the creditor filing such allegations, with condition, that if the insolsent shall not regularly prosecute the said appeal to effect, he shall satisfy the said creditor for his debt, as well as for all costs, &c. or render himself in execution—if the appeal be prosecuted, and the court decide favorably for the insolvent, the bond to be void.

§ 8 Upon any application to any county court or Judge thereof, or to any justice of the orphans' court, a provisional trustee shall immediately be appointed, to whom the applicant shall make the usual deed, deliver his property, and no personal

Applicants. discharge shall be granted, until the same shall have been done, and the trustee shall have certified, in writing, that he is in possession of all the estate mentioned in the schedule.

1827, c. 70. § 6 Not extended to the city or county of Baltimore. If at the time of final hearing of any application in the county court, to which the applicant's petition may be returnable, there shall have been filed no interrogatories or allegations, or the same if filed, shall have been satisfactorily answered, or decided in favor of the applicant, the court shall then extend to the applicant a final discharge, without the consent of creditors.

§ 8 All the property of the petitioning debtor not mentioned, or included in his schedule, shall be subject to execution and attachment in the same manner, as prior to the time of his petioning.

1828, c. 63. Any insolvent who may obtain, or has obtained a personal or final discharge under the act to which this is a supplement, or under any of its supplements, (1805, c. 110) shall be entitled to be discharged from custody upon any attachment or other process which has been or may be issued against such debtor, to enforce execution of anyorder for payment of money, which may be passed by the court of Chancery, any county court sitting as a court of equity or orphans' court against such debtor for any debt or claim contracted, or liability incurred for such money before said discharge of such Insolvent, and it shall be the duty of the Chancellor, or of the before mentioned county court out of which such process may issue, or any Judge thereof in the recess of said court, upon motion to discharge such debtor, Provided, that before any such debtor shall be entitled to his discharge as aforesaid, he shall produce to the Chancellor, the court, &c. a copy of said discharge certified by the clerk of the court in which such discharge may be lodged or recorded, and under the seal thereof, and

Provided, This act shall not extend to any action or process that may issue to compel payment of any fine or amercement or penalty which may be imposed by the said Chancellor or court, &c.

1829, c. 31. Any county court in which an applicant's petition is pending upon the answer of the insolvent to interrogatories exhibited, or upon the trial of any issue by a jury upon allegations filed, or upon the continuance of such petition to any subsequent term, may award to the creditors exhibiting such interrogatories, &c. or to the petitioner, his or their reason-

able costs in like manner, as in all other cases depending in said courts.

1829, c. 208. In all cases of unfavorable report by the commissioners upon applications to them, the petitioner may require Baltimore county court to examine into his case, and said court may direct an issue or issues to be joined before a jury in a summary way without the form of an action, to determine the truth of any charge of fraud on the part of said petitioner, within the contemplation of the Insolvent Laws.

§ 2 If on such examination the court be of opinion that the petitioner is entitled to the benefit, or if the finding of the jury be in his favor, the same shall be granted to him in the same manner as if the report of the commissioners had been favorable to such applicant.

CLERK,

Clerk 1805, c. 90. § 14 Of the court of the county in which an applicant shall or may reside, to record the proceedings under this act, receive fees for the same as in other cases, payable at the time of discharge.

1827, c. 70. § 5 A copy of trustee's bond certified under the hand and seal of the clerk of the court to which the Insolvent's application may be returnable, to be received in evidence as freely as the original bond.

COMMISSIONERS.

1816, c. 221. Commissioners of Insolvents in the city and county of Baltimore.

The governor and council authorized to commission three persons of legal knowledge, integrity and experience, as commissioners of Insolvent debtors of Baltimore city and county.

§ 2 All future applications by Insolvents to the county court of Baltimore or to the judges thereof, to be referred to the commissioners, who shall thereupon appoint a provisional trustee for the benefit of the applicant's creditors, to take possession of all the books, papers, property, &c. of the applicant. The commissioners shall take bond with security to be by themselves approved, for the applicant's appearance, to answer such interrogatories as may be proposed to him by creditors, or such allegations as may be filed against him within the time hereinafter mentioned. The commissioners shall thereupon

Commissioners report to the court or judge that the trustee appointed by them is in possession of the insolvent's property, &c. and the court or judge shall thereupon grant a discharge of the person only.

§ 3 Within ten days from the time of personal discharge the commissioners shall cause notice thereof to be given in one or more newspapers of the city of Baltimore, and notice also of the time fixed for final hearing, requiring the creditors to attend at such time and place as may be appointed by the commissioners, and nominate some person or persons whom the commissioners shall appoint as trustee, and to give to the commissioners all the information in their possession to enable them to report properly to the court.

§ 4 The notice thus given shall be in lieu of any other hitherto required.

Commissioners required diligently to inquire into the nature of the applications made to them, may compel the applicants to answer, on oath, all interrogatories touching the subject matter exhibited or proposed, on behalf of all, or any of the creditors, and if upon such examination the applicant shall appear to have complied with the terms, &c. of the Insolvent Laws, and hath acted fairly and bona fide, the commissioners shall report the same to Baltimore county court, and return the schedule and all the proceedings had before them, to the office of the clerk of Baltimore county, to be recorded, and the applicant shall thereupon have a full and final discharge without requiring the assent of creditors; Provided, that the judges of Baltimore county court shall not grant final discharge, if allegations be filed by any creditor of such applicant, at least ten days before the time fixed for his final discharge, until such allegations shall have been heard and determined in

§ 5 favor of the Insolvent: and Provided nothing herein contained, shall be construed to deprive the creditors, or any of them, of the right of filing allegations at any time within two years from the time of discharge.

§ 7 Commissioners shall receive such compensation for their services as the judges of Baltimore county court shall deem proper, to be paid by the petitioner or trustee, as the court may direct.

The act by which the board of commissioners of insolvents for the city and county of Baltimore is established, not affected or changed by the act of 1817, c. 183.

1817, c. 183. No petition previous or subsequent to this act, to any judge of the county or orphans court, to be dismissed before the term appointed for the hearing thereof.

Commissioners The commissioners of insolvents in Baltimore city and county, vested with the same power as possessed by the
1819, c. 84. county court in every respect, and shall fix the time for final
§ 1 hearing before the county court, and if it shall appear that the applicant hath complied with the terms, &c. required by the act of 1816, c. 221, and acted fairly and bona fide, the same shall be reported by the commissioners to Baltimore county court, in the manner directed by the fifth section of 1816, c. 221, and shall proceed thereon as directed in said section, and if it shall appear to the commissioners that the applicant hath not acted bona fide, and fairly, &c. they shall certify the same.

1819, c. 84. Whenever commissioners report unfavorably on any case,
§ 6 they shall transmit to the clerk of Baltimore county court all deeds of assignment executed by such applicant, and all such other papers relating to the insolvent's estate, or produced before them, as they shall deem it proper to have recorded, and said clerk shall record such papers as in other cases, and give certified copies thereof, and shall be entitled to the same fees for so doing as in other cases, payable by the trustee out of effects assigned to him; and in all such cases of unfavorable reports by the commissioners, they shall cause the trustee to proceed in the execution of his trust in the same manner, &c. as if the commissioners had reported favorably.

§ 8 Commissioners may make orders on provisional trustees of insolvents, requiring them to deliver over the estate, &c. of insolvents, in their hands, to permanent trustees, and are invested with power to enforce such orders through the intervention of the county court or the judges thereof.

§ 9 The allowance made by 1816, c. 221, to commissioners, together with all costs attending the applications of petitioners shall be first paid out of the effects of applicants: but no application to be refused, or the benefit withheld, because of the applicant's estate being insufficient for this purpose.

1820, c. 182. Commissioners authorized to appoint a permanent trustee
§ 1 at any time after an application made to them for the benefit of the insolvent laws, whenever a majority of the creditors in value, their agents, &c. shall nominate and recommend, in writing, any person for that purpose and upon such appointment, it shall not be necessary for the commissioners, in giving notice of personal discharge and the time fixed for final hearing (according to the act of 1816, c. 221) to require creditors to attend and nominate a trustee, but they shall state in said

Commissioners notice, that an appointment has been made by them in pursuance of the recommendation aforesaid.

§ 2 Not less than two of the commissioners shall act upon any petition, to appoint trustees, grant discharges or to perform any of the functions of their office: Provided always, that the proceedings heretofore rightfully had shall not be construed to be hereby rendered void.

1821, c. 250. In all cases of application for the benefit of the insolvent laws before the commissioners of insolvent debtors for the city and county of Baltimore, or before Baltimore county court, in which the petitioner may fail to appear, on the day required by law, said commissioners, or said court, as the case may be, shall have power in their discretion, if they believe such failure not to have been designed for fraudulent purposes, to continue the case of such petitioner upon their docket until some other convenient day, whereof such notice shall be given by the petitioner as they shall direct.

§ 2 Cases of failure previous to this act, allowed to be continued.

1822, c. 102. When the commissioners, &c. report unfavorably on any petition, on the ground of the applicant's not having acted in their opinion fairly and bona fide, at any time thereafter said applicant may prosecute a second petition: Provided, that said commissioners, before acting thereon, shall be satisfied that no property or estate whatsoever, then belonging to the applicant, was retained by him on his first application, for the purpose of defrauding his creditors, and that he then acted fairly and bona fide; and Provided said commissioners shall not report favorably on any application under this law unless they be so satisfied as above specified.

§ 2 Commissioners shall require of every applicant, under this law, to answer again at the usual time, on oath or affirmation, all the interrogatories filed against him on his previous application as well as any others that may be filed against him on his application under this law.

1825, c. 205. The commissioners of insolvents for the city and county of Baltimore, or any judge of any county court, or any justice of the orphans court, may receive and entertain the petition of any applicant without requiring the usual security for appearance; Provided, such applicant be not discharged from custody until the petition be finally heard and decided on, and that the applicant conform to the requisitions of the insolvent laws in all respects, except as provided by this law.

Commissioners In all applications the commissioners of insolvents for the city and county of Baltimore, &c. shall administer the oath
§ 3 prescribed by this section, (see the Law, p. 47.)
§ 4 Any insolvent convicted of swearing or affirming falsely under such oath, shall suffer as for wilful and corrupt perjury, and be forever debarred from any benefit of the insolvent laws of this state.

1839, c. 206. In all cases of petition before the commissioners of insolvents for the city and county of Baltimore, in which said commissioners shall make an unfavorable report to Baltimore county court on such petition, it shall be the duty of said court, if thereto requested by the petitioner, fully to examine into the case of such petitioner, and if there be any charges of fraud within the contemplation of the insolvent laws, against such applicant, the court shall cause an issue or issues to be framed in a summary way without the form of an action, to determine the truth thereof, and the same shall be tried by a jury.

§ 2 If upon such examination the court be of opinion that the petitioner is entitled to the benefit, or if the jury find in favor of the petitioner on the issue or issues submitted to them, the applicant shall have granted to him the benefit of the insolvent laws, as if the report of the commissioners had been favorable.

CONVEYANCES.

1812, c. 77. Deeds, assignments, &c. made by any one with a view to insolvency, shall be absolutely null and void, and the title of
1816, c. 221. property so attempted to be conveyed, shall rest in the trustee.
§ 6 All conveyances by insolvents, with a view to an improper preference of creditors or security, mentioned in the 1st, section, of act of 1812, c. 77. and described in that of 1807, c. 55. § 1, declared void, and the property so intended to be conveyed, vested absolutely in the trustee—Provided, however, that no applicant shall be excluded from the benefit of the insolvent laws, on account of having given any such pre-
1819, c. 84. ference.
§ 6. Whenever commissioners report unfavorably, all deeds of assignment executed by the applicant, and other papers shall be transmitted to the Clerk of Baltimore county court, and by him duly recorded.

CREDITORS,

1805 c. 90. A list of—to be given by the applicant at the time of his ap-
§ 2 plication, as far as he can ascertain them, on oath, or affirmation.

Creditors. Personal notice directed to be given to—by the direction of the county court, and to as many of them as can be served therewith, or their agents or attorneys, or notice of such application to be advertised in the most public places of the county, where the debtor resides, or to be inserted in some newspaper for such time, as to the court may seem proper, and on the appearance or neglect to appear, of the creditors, at the time and place appointed, the county court shall administer the prescribed oath to the applicant.

A majority of—in value, their agents or attorneys, may nominate whom they please as trustee, for their benefit—but in case of non-appearance of creditors or of their not making a recommendation, the county court shall name whom they chose. Assent in writing of two-thirds in amount of—requisite,

§ 3 unless the applicant has resided in the state of Maryland two years previous to his application.

Foreign—not resident in the United States, nor having authorized agents or attorneys therein, not to be considered as creditors for the purpose of such assent.

Such assent of—not necessary for the discharge of the person only, either by the county court, or by any judge thereof, during recess—from imprisonment on account of debt, due at the time of application.

§ 4 Bond to be given to the state by the trustee before acting, for the use of the insolvent's creditors.

§ 9 If any creditor at the time of the insolvent's application, or within two years thereafter, shall allege, in writing, to the county court—that such applicant hath directly or indirectly sold, conveyed, lessened or otherwise disposed of or purchased in trust for himself or any of his family or relations, or for any person or persons, or concealed any part of his property of any kind, or any part of his debts, &c. thereby to deceive or defraud his creditors or any of them, &c. or to secure the same, or to receive or expect any profit or advantage thereby, or that he passed bonds or other evidences of debt, either without or on an improper consideration, or lost more than $100 by gaming, at any one time, or has assigned, &c. his property, with intent to give an undue or improper preference to any of his creditors or security, before his application for the benefit of this act, the county court may thereupon, at the election of the creditor, making such allegation, either examine the said debtor or any person to whom he may have made any conveyance of his property, &c. on interrogatories, of which the creditor, alleging, may or not furnish the respondent with a copy for the purpose of obtaining his answers on

Creditors.

oath or affirmation, concerning the subject of such allegation, or may direct an issue in a summary way without the form of an action to determine the truth of the same, and if upon answer or by verdict, such debtor be found guilty of any fraud or deceit of his creditors or loss by gaming as aforesaid, the shall be forever excluded from any benefit of this act—the debtor wilfully, and falsely, swearing to any matter to which he shall answer or affirm by virtue of this act—shall suffer the penalty of perjury, and be forever excluded from the benefit of this act.

§ 12 Must bring in their claims within the time limited by the court, and if required, must be examined concerning the same on oath or affirmation—contested claims may be tried by a jury, and in case of collusion between debtor and creditor, the latter shall lose his debt and be excluded in the distribution.

1807, c. 55. The terms "undue and improper preference of any creditor or creditors," explained.

1808, c. 71. Assent of two-thirds of, dispensed with, as to personal discharge.

1812, c. 77. § 2 Assenting to an insolvent's discharge, shall make oath or affirmation, before some justice of the peace, or notary public, that said insolvent is bona fide indebted in the sum claimed as due—and that no security or satisfaction has been received for the same—unless such oath, &c. be annexed to the assent, such creditor shall not be included among the creditors of the insolvent.

1816, c. 221. May propose interrogatories to, or file allegations against, an insolvent, before commissioners shall have notice given them of the day of final hearing of an insolvent, and shall be required to attend to nominate whom the commissioners shall

§ 3 appoint trustee, and give the commissioners all information in their power.

§ 5 Any creditor may file allegations or interrogatories against an applicant ten days at least, before the day of final discharge: but may still exercise the right of filing allegations within two years from the time of discharge.

1820, c. 108. All individuals, banking companies and corporate bodies, authorized to assent to the final release of any applicant indebted to them, without discharging, or in any manner affecting the rights of such individuals or corporations, to recover

§ 1 the debt from which said applicant shall be released, of any indorser or other person who may also be liable or bound for the same.

Creditors. Such assent by such corporate bodies may be given by and through the President of such bodies, and the affidavit or cer-
§ 2 tificate of said President, of the amount due the corporate body, shall have the same effect, and entitle the petitioner to the same relief, as is afforded when such affidavit is made by a creditor assenting to a release of his own particular debt.

D, c. 186. The creditor shall pay weekly, to the sheriff, 87½ cents for the support of any debtor confined at his suit on a ca. sa, or otherwise committed for nonpayment of any judgment recov-
§ 1 ered before a justice of the peace of this state, and if default be made in any weekly payment, and said debtor be confined for debt alone, the sheriff shall forthwith certify such default, in writing under his hand, to some justice of the peace of the county, where such debtor shall be confined; setting forth all particulars, and the justice of the peace, upon the production of such certificate to him, shall endorse there on anorder to the sheriff to discharge such debtor from prison: which order shall be obeyed. Provided the creditor shall not thereby be precluded from proceeding afterwards, as often as he shall think proper against such debtor, by fi. fa. ca. sa. or otherwise on the judgment; and in case such proceeding shall be by ca. sa. it shall be subject to the aforegoing provisions: and Provided, that if such debtor, while in actual confinement as aforesaid, shall be arrested on aca. sa. issued at the suit of any other creditor, or shall be otherwise committed for nonpayment of any judgment rendered by any justice of the peace, or by any county court of this state, or for non-performance of any decree for the payment of money made by any court of equity in this state, it shall be lawful for the creditor, at whose instance said subsequent arrest or commitment may be made, to pay for the support of such debtor in prison, in the manner herein before directed, and in case such payments shall be so made, said debtor shall be detained in prison, notwithstanding, the default of the creditor at whose instance said debtor was originally arrested or imprisoned.

§ 2 When a ca. sa. is issued out of any county court of the state, or the court of appeals of either shore, or any court of equity in the state, or otherwise committed by any court of law or equity in this state for nonpayment of any money recovered against him by judgment or decree, or for want of special bail, the sheriff, to whose custody such debtor may be committed, shall immediately notify, in writing, the creditor or creditors, at whose instance such debtor shall be committed, or his or their attorney, that said debtor is in actual con-

Creditors.

finement, specifying in such notice, the suit or cause in and for which such debtor hath been committed, and said creditor or creditors within fourteen days exclusive of the day of

§ 2 notice, after its service as aforesaid shall pay the sheriff $2.62½ cents and 87½ weekly thereafter, for the support of said debtor in prison so long as he shall be confined at the suit or instance of such creditor or creditors—and if default shall be made in any payment directed by this section, for the support of the debtor as aforesaid, then the same proceedings shall be had as are directed in the first section of this law, subject to the provisions and conditions contained therein.

§ 3 But the provision herein contained shall not be extended to any debtor who has been or shall be convicted on allegations filed against him under the act of 1805, c. 110, and who may be confined in prison for any debt due or owing from him before his application for the benefit, but whenever any person, so convicted, shall be committed or confined for any debt so due, or owing, or for want of special bail in any suit already instituted, or hereafter to be instituted for any such debt, the sheriff shall support and maintain such debtor while in prison, and shall be paid therefor the same sum and in the same manner as is now allowed in cases where persons are confined in goal, charged with the commission of felony or any other crime.

§ 4 If any prisoner be discharged from prison before the expenditure of the money hereinbefore directed to be paid to the sheriff, for the support of such prisoner, at the rate of 12½ cents per diem, the sheriff, on the discharge of said prisoner, shall forthwith repay to the creditor or creditors the money so advanced and not expended.

§ 5 The amount which may have been paid by said creditor or creditors for the support of such prisoner shall be considered as a preferred claim, and be first paid out of the effects of such prisoner, should he (or she) be finally released under the insolvent laws of this state.

If fraud or deceit towards the creditors be practised by any

1825, c. 205. § 4 & 5 applicant in his or her answer to interrogatories, or to the allegations filed by creditors, he or she shall suffer as for wilful and corrupt perjury, shall be debarred all benefit of the insolvent laws of this state, and judgment shall be given in favor of the creditor or creditors filing such interrogatories or allegations for his reasonable costs and charges.

§ 6 Applicant has a right of appeal from the opinion of the county court on any allegations filed to the appellate court of

reditors. his shore; upon taking the appeal shall give bond to the creditor or creditors filing the allegations conditioned in the usual manner.

', c. 70. If at the time of final hearing of any application in the county court to which the applicant's petition may be returnable, there shall have been filed no interrogatories or allegations: or the same, if filed, shall have been answered satisfactorily or decided in favor of the applicant, a final discharge shall be granted without the assent of creditors.

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', c. 31. Pending the petition of an applicant before any county court, if interrogatories be exhibited, or allegations filed on the part of creditors, costs shall be awarded by the court in this as in all other cases according to the result, either in favor of the applicant or of the party filing the same.

EXECUTORS.

', c. 150. Executors and administrators may sign their assent to the release of an insolvent whenever they shall deem the same right and proper.

GAMING.

', c. 90. § 9 Applicant proved to have lost $100 at any one, time previous to his petitioning, to be excluded from the benefit.

', c. 150. Such loss must have been within three years previous.

JUDGMENTS.

gments. Judgments and liens shall be first satisfied by the trustee of an insolvent out of the proceeds of sale of the insolvent's

', c. 110. estate, but no judgment entered after the passage of this act, or after the time of application to the county court for the benefit of this act, against any of the said debtors (therein specified by name) who shall take advantage of this act, shall be a lien on his real property, nor shall any process against his real or personal property, have any effect thereon, except writs of fi. fa. actually and bona fide laid before the passage of this act, or the time of application to the county court for the benefit thereof.

', c. 205. Judgment shall be given in favor of the creditors filing interrogatories or allegations, in case the applicant be proved

Judgments. guilty of fraud or deceit. Such judgment to be for the reasonable costs and charges of the creditors in filing such interrogatories, &c.

1827. c. 70. § 7. The voluntary confession of any judgment in favor of any creditor or creditors, security or securities, made by any person with a view, or under an expectation of being, or becoming an insolvent debtor, shall be, and the same is hereby declared to be an undue and improper preference of such creditors or securities within the meaning of the 9th section of the act to which this is a supplement.

NOTICE.

Notice. § 21. Two months public notice, previous to application, necessary.

1805. c. 110. 1808. c. 71. Notice required by 1805, c. 110, dispensed with for personal discharge.

1816. c. 221. § 3. Within ten days after an insolvent's application to the commissioners of insolvents, public notice of such application shall be given in one or more newspapers printed in the city of Baltimore, stating the day of final hearing, and requiring creditors to attend, to nominate a permanent trustee.

§ 4. The notice thus given, shall be in lieu of any other hitherto required.

1820. c. 182. § 1. At any time after the application of an insolvent, the commissioners of Baltimore city and county insolvents, may appoint a permanent trustee, when a recommendation and nomination in writing, is made by a majority of the creditors in value, and in case of such appointment, the notice required by the act of 1816, c. 221, shall be modified, so as to state that an appointment has been made by them in pursuance of the recommendation aforesaid.

ORPHANS COURT.

Orphans court. Any judge may grant a personal discharge to any one actually imprisoned in the county of said court, upon the debtor's

1817 c 183. § 1 written petition and giving bond with approved security, and penalty for appearance before the county court at such time as the judge of the orphans' court may appoint for a hearing according to the provisions of 1805 c. 110. For his trouble,

Orphans court. said judge of the orphans' court, allowed $1; payable by the debtor.

§ 3 All proceedings had by such judge to be lodged with the clerk of the county court within thirty days thereafter, and the judges of the county court shall proceed thereon according to the provisions of 1805 c. 110, and the supplements thereto.

§ 6 Nothing herein contained, to repeal the act of 1816 c. 221, or change it in any manner.

§ 7 No petition previous or subsequent to this act, to be dismissed before the term appointed for the hearing thereof by the judge to whom the application hath been or shall be made.

825 c 205 § 1 Any justice of the orphans' court, judge of any county court, or the commissioners of insolvents for the city and county of Baltimore may receive and entertain the petition of any insolvent, without requiring from said insolvent the usual security for appearance, provided no discharge from custody be granted until such petition shall have been finally heard and decided on, and that the applicant comply with all the other requisitions of the insolvent laws, except as herein provided.

PREFERENCE.

What is undue and improper preference of creditors or securities, mentioned in the act of 1812 c. 77 § 1 and of 1816 c. 221 § 6, described in 1807 c. 55 § 1, and in 1827 c. 70 sec. 7. Vide. 1 Har. & Johns, 492.

SHERIFF.

1805, c. 110. § 11 The county court, or any judge thereof, may order the sheriff or other officer, in whose custody an applicant may be, to bring such applicant before the court, or judge, at a certain time in said order to be appointed for the purpose of taking the oath prescribed: said sheriff or other officer shall obey such order, and shall be entitled to a preference after the discharge of all liens on the said applicant's estate, before all other creditors in the payment of his account against the said applicant for his legal fees of imprisonment and reasoan-

Sheriff. ble expenses in carrying said debtor to the county court, &c. in obedience to the order aforesaid.

1819, c. 84. § 2 If any one arrested on a writ of ca. ad. resp. issued against him, shall regularly obtain a personal discharge from the commissioners of insolvents, &c. and such person shall not obtain a final discharge, in such case if any suit or action shall or may be depending against such applicant, in which his common appearance had been entered, the plaintiff or plaintiffs therein, or his or their attorney, in cases where special bail is demandable by law, may issue out of the court, in which such suit or action may be depending, another ca. ad respond. or other process against such defendants, stating therein the impetration of the *personal* and refusal of the *final* discharge of such defendant; and it shall be lawful for the *sheriff* or other officer, to whom such writ may be directed and delivered, to arrest such defendant, and safely keep him until special bail in such suit, &c. be given, and shall then proceed, as if the said original writ had never been issued, or said personal discharge had never been obtained.

1820, c. 186. § 2 When a debtor who hath been convicted on allegations filed against him according to act of 1805, and who may be confined in prison for any debt due or owing from him before his application for the benefit, or for want of special bail, &c. it shall be the duty of the sheriff to support and maintain such debtor while in actual confinement, and he shall be paid therefor the same sum, and in the same manner as is now allowed in cases of persons confined in goal charged with the commission of felony or any other crime.—See sections, 2, 4, 5, 6, 7, and 8.

The law of 1805, c. 110. has reference to persons in actual confinement.

TRUSTEE.

Trustee. Trustee, by 1805, § 2, c. 110 to be appointed by the county court, by the recommendation of a majority of the creditors in value—in case of non-attendance or non-recommendation by creditors, court shall appoint such persons as they shall think proper.

§ 4 Before proceeding to act, required to give bond for the faithful performance of his duty, to the state for the use of applicant's creditors, in such penalty as the county court may direct.

Trustee. Refusing to act, or delaying or neglecting to give bond as aforesaid, in a reasonable time, to be adjudged of by the county court, or having been removed by said court for misbehaviour, such other shall be appointed in his place, as the court shall think proper; who, on giving bond as aforesaid, shall immediately be vested with all the property of every kind, and all the debts, rights, and credits of the applicants in like manner as the same were vested in his predecessor.

§ 7 May be directed by the county court, to sell and convey the property held by him as trustee, at such times and on such conditions, as the court shall think most advantageous to the creditors, and the proceeds, after satisfying all judgments and liens, shall be divided among the said creditors agreeably to their several respective claims.

§ 8 May sue for, in his own name, and recover any property or debt assigned to him by any debtor in virtue of this act, and may also prosecute, to judgment, any suit commenced by the debtor before his appointment.—Vide 1, Har. & Johns, 289.

§ 10 To be allowed by the court, a commission not exceeding eight per cent—if any complaint made against him by a creditor interested in the distribution, or if any trustee, hath or shall become insolvent, the court may call him before them and summarily inquire into the cause of such complaint, may make such rules and orders concerning the same as they may think proper, and may punish him for contempt in case of nonobedience of the same, and if necessary may remove him.

§ 12 May be ordered to retain funds for the eventual satisfaction of contested claims, or to be brought again into distribution.

07, c. 150. May sign their assent to the release of any applicant, whenever they shall deem the same right and proper. Provisional trustee to be appointed by the court at the time of application by the insolvent.

12, c. 77. Invested with the title to all property conveyed, transferred, &c. by an insolvent, previous to his insolvency with a view to defraud his creditors. See 6, Har. & Johns. 264.

§ 6 Appointment of, operates as an assignment of all the insolvent's property, without the necessity of a deed from the insolvent.

16, c. 221. The commissioners of insolvents for the city and county of Baltimore, shall upon application by petition of the insolvent, for the benefit, appoint a provisional trustee to take possession, for the benefit of creditors, of the insolvent's property, papers, &c.

§ 2 Upon the commissioners reporting to the court, that the

Trustee. trustee is in possession of the insolvent's property, &c. a personal discharge granted.

§ 3 Permanent trustees to be nominated by creditors, and appointed by the commissioners.

§ 5 Trustee shall be vested with a right to all property of the insolvent, though fraudulent conveyances of the same may have been made. (See 1807, c. 55, § 1 p. 22.) Conveyances giving undue and improper preferences. See 5, Har. & Johns. 403.

1819, c. 84. § 6 Trustees to pay the Clerk of Baltimore county court the usual fees, for recording such papers in the case of insolvents as may be transmitted to said Clerk by the commissioners.

1819, c. 84. Shall proceed to the execution of his trust, in cases of unfavorable report by the commissioners, on an application, in the same manner as said trustee would be required to proceed had such report been favorable.

§ 7 In all cases before the commissioners in which a permanent, different from the provisional trustee, shall be appointed, they shall cause a deed of transfer, &c. of all the estate, rights, credits, and effects of the insolvent to be forthwith executed by the provisional to the permanent trustee, and lodged among other papers belonging to the insolvent's case.

§ 8 Every provisional trustee appointed by virtue of the act of 1816, c. 221, shall, before he acts as such, give bond with good and sufficient security, to be approved by the commissioners for the performance of his trust, and for the transfer and delivery over of the estate and effects of the insolvent to the permanent trustee to be appointed by virtue of said act, and if any provisional trustee so appointed, on the appointment of any permanent trustee, and on the order of the commissioners to deliver over the estate, &c. to such permanent trustee, on a day in said order to be mentioned, shall fail or neglect to comply with such order, the commissioners are required to report such delinquency to Baltimore county court, or in the recess thereof, to the chief judge of said court, who shall proceed by attachment against such provisional trustee as in cases of contempt, for compelling him to obey the order aforesaid of commissioners, and such other order as the said court or judge thereof may make; Provided nothing herein contained shall be construed to protect the sureties of such provisional trustee against a recovery on their bond, if any part of the insolvent's effects shall not be delivered over in pursuance of any order or attachment issued by virtue of this act.

1820, c. 182. May be appointed, permanent at any time whenever a ma-

Trustee. jority of the creditors in value, give a written nomination and recommendation.

1820, c. 182. § 2 Trustees not to be appointed, discharges granted, nor any of the functions reposed in the commissioners to be performed, by less than two of said commissioners.

1820, c. 194, In all cases where a trustee hath been or shall hereafter be appointed by virtue of the act of 1805, c. 110. or of the act of 1816, c. 221. it shall be lawful for said trustee, at any time after his appointment, to be discharged from his trust; Provided said trustee shall petition the county court of the county in which he was originally appointed, setting forth his desire to be released from further execution of said trust, and in all other respects comply with the provisions of this act, and provided it shall not be lawful for said court to discharge any trustee as heretofore mentioned, unless they shall be satisfied, by competent testimony, that it is for the interest of the creditors of such insolvent, that said trustee should be so discharged, and unless said trustee shall also produce the assent, in writing, of two-thirds in value of said creditors to such discharge.

§ 2 The county court, upon such discharge being made, shall appoint another trustee, into whose possession shall be delivered all the property and effects (if any) belonging to the estate of the insolvent debtor which were originally conveyed to the trustee petitioning as aforesaid, or so much thereof as may then be remaining in his possession, subject to such exception as may hereinafter be made, and said petitioning trustee shall thereupon, under the direction of said court, make the proper conveyances and assignments of the same.

§ 3 When the trustee, so petitioning as aforesaid, shall make said conveyances and assignments, and the trustee thus substituted in his place, shall certify that he has received possession of said property, producing, at the same time, a schedule thereof, said certificate and schedule to be filed in the office of the clerk of the county, and having given bond in pursuance of the directions of this act, then the said trustee, so petitioning as aforesaid, shall thereupon be discharged from the execution of any further or future duty or obligation arising out of his appointment as trustee for the creditors of said insolvent.

§ 4 Such substituted trustee shall give bond in the same manner as the trustee originally appointed, which shall likewise be recorded, and a copy thereof shall be in like manner received as good evidence in any court of law or equity in this state:

Trustee. and he shall comply with all the provisions of the act of 1816, c. 221.

§ 5 Any trustee appointed by virtue of the act of 1816, c. 221. or of 1805, c. 110. or of this act, may petition the county court of the county in which he was appointed, setting forth his desire to surrender his trust, at the same time producing the written assent of two-thirds of the creditors in value, consenting to such surrender; and it shall thereupon be the duty of the said county court, provided they shall believe that such surrender would not be prejudicial to the interests of the creditors, to grant permission to the said trustee to surrender up his said trust to the county court: and the trustee forthwith under the direction of said court, shall return into the possession of the insolvent from whom he originally received the same, all the property, &c. conveyed to him by said insolvent, or so much thereof as may then be remaining in his possession, subject to such exceptions as may hereinafter be excepted, and it shall be the duty of such surrendering trustee, to return to the county court a schedule of the surrendered property, and thereupon the deed originally conveying the same to the said trustee shall thenceforth be deemed as void, as regards the property so returned, and upon the making of said surrender, and return of said schedule, said trustee shall thereupon be discharged from the execution of any further or future obligation or duty arising out of his appointment as trustee for the creditors of said insolvent.

The trustee so assigning or surrendering his trust may be allowed by the court to retain such portion of said trust estate as may be necessary for the payment of any debts due or to become due by said trustee in virtue of his appointment as trustee of said insolvent, and also for the payment of such commission not exceeding eight per cent. as the court may deem a reasonable compensation for services rendered. 1 Har. & G. 96.

§ 7 Trustee to account for any surplus remaining after paying said debts and commissions, and under the direction of the court shall pay over the same in case of a surrender of the trust to said insolvent, or in his absence to said court, who shall hold the same subject to the order of said insolvent, and in case of an assignment of the trust as provided by this act, to the trustee to whom such assignment was made.

1825, c. 28. Any county court or judge thereof, or any justice of the orphans' court to whom application is made, &c. shall immediately thereupon appoint a provisional trustee for the creditors of the applicant, and a personal discharge shall not be granted by any of them until the trustee so appointed give

Trustee. bond with approved security, for the faithful discharge of his trust, and until the applicant shall execute to said trustee the usual deed, &c. and the trustee shall certify, in writing, that he is in possession of all the estate of the said applicant mentioned in his schedule.

§ 9 Nothing herein shall be construed to prevent the appointment of any permanent trustee in the usual manner.

§ 10 Upon the appointment of any permanent trustee, it shall be the duty of the provisional trustee to execute to him a good and sufficient deed, &c. except as hereinbefore provided.

1827, c. 70. The provisional trustee so appointed shall have power in his own name, or in the name of the applicant to sue for and collect all debts and demands due or owing to said applicant, and to give and execute receipts, releases and acquittances for the same.

§ 3 Said trustee shall, upon terms and notice, such as may be prescribed by the county court or any judge thereof, or any justice of the orphans court granting a personal discharge to the applicant, dispose of and sell at public auction all the applicant's estate, real, personal, and mixed, conveyed to him as aforesaid, whether the application of said petitioning debtor be prosecuted to a single hearing or not, and the proceeds of sale, to distribute amongst the creditors of the applicant agreeably to the provisions of the 7th section of the act to which this is a further supplement, after deducting the commissions allowed by the 10th section of said act.

§ 4 Said trustee shall have authority to convey and assure to any purchaser or purchasers, and to his, her, or their heirs, &c. whatever estate he may sell agreeably to the provisions of this act.

§ 5 Upon the failure of any trustee (appointed agreeably to the provisions of this act) duly to discharge his trust, his bond may be put in suit at the instance, and for the use of any creditor of the petitioning debtor or other interested in the faithful execution thereof, and in such cases a copy of the bond under hand and seal of the clerk of the court to which the said insolvent's application may be returnable, shall be received in evidence as freely as the original bond.

1829, c. 208. § 3 The appointment of a provisional trustee under the act to which this is a further additional supplement, when such trustee shall have filed bond with security as required by law, shall vest in such trustee all the estate, property, ef-

Trustee. fects, rights, and claims of the insolvent, and shall ex an authority to such.

Trustee to take possession for the benefit of the c of all the property, estate, and effects, books, pap counts, bonds, notes, and evidences of debt, of su vent without the necessity of such insolvent's exe deed thereof, and to entitle such trustee to use all leg for the recovery thereof.

PART SECOND.

DECISIONS OF THE

COURT OF APPEALS OF MARYLAND.

Decisions.

The first decision on the subject embraced in this compilation, pronounced by the appellate court of Maryland, is to be found in the case of Bussy, vs. Ady, May term, 1792, reported in 3 Har. & McHen. p. 97.

An insolvent debtor in replevin for a horse brought by his trustee, is not a competent witness to prove the property of the horse was in him, although it appeared by his schedule he was not entitled to any surplus.

Where an insolvent was discharged under the insolvent law of 1794, the conveyance by the sheriff of his land, was held to be valid, although the schedule transmitted to the county court, by the justices, was not signed or submitted by the insolvent or by the justices. Vide Chapline, vs. Shoot, 3 Har. McHen. p. 350.

A deed executed to A. as trustee of an insolvent debtor, for real and personal property, was held not to be evidence to prove that A. was eligible as a candidate for the office of sheriff. Vide 4th, Har. & McHen. p. 279, Hutcheson, vs. Tilden and Bordley.

October term, 1800.

A defendant, taken in execution on ca. sa. was discharged on his producing his release under an insolvent law of another state. McKim, vs. Marshall, 1st, Har. & Johns, 101. A similar decision appears to have been given in the case of Harrison vs. Young, at May term, 1788. In that case a non est was returned upon a ca. sa. issued upon a judgment rendered in this court. The special bail of the defendant suggested to the court, that the defendant was a citizen of the state of Pennsylvania, and had complied with the laws of that state relative to bankrupts and bankruptcies, and obtained a certificate of such conformity, and an allowance of the said certificate by the President of the said state, pursuant to the said laws: all which appeared to the court by the record of the proceedings produced. It was decided that the special bail in the action was by such certificate discharged from his undertaking for thedefendant.

Decisions.

An action may be maintained in the name of an insolvent debtor, unless there is a trustee appointed who has accepted the trust, and to whom a deed has been executed. Vide Kirwan, vs. Latour, 1 Har. & Johns. 289.

Where conveyances have been made to particular creditors in contemplation of insolvency, they were held to be undue and improper preferences, and therefore void under the act of 1800, c. 44. Vide Manro, vs. Gittings and Smith, 1 Har. & Johns, 492.

Property acquired by an insolvent debtor after he has been legally discharged under the insolvent law of 1774, c. 28. otherwise than by descent, gift, devise, bequest, or in a course of distribution, is not liable for or subject to debts contracted prior to his discharge, and if such property is liable, it cannot be affected by fi. fa. without a sci. fa. having previously issued if a year and a day have elapsed.* Vide Pollit, vs. Carsons, 2 Har. & Johns. 61.

No person can set up his discharge under an insolvent law to disaffirm his prior acts. Vide Dorsey, vs. Gassaway, in which it was decided, that certain acts and declarations of the defendant, subsequent to his sale of the slave for which an action of replevin was brought, and before his insolvency, are not evidence to defeat the claim of the plaintiff, 2 Har. & Johns. 408, 411.

Declarations made by a defendant before and after his discharge under an insolvent law, may be given in evidence against him. Idem. 410.

It is not declared by the act of 1805, c. 110. or 1807, c. 55. that a deed or assignment, or any other act of undue preference is fraudulent or void, or inoperative to pass the property: such deed, &c. executed by a debtor giving an undue preference to one of his creditors, &c. will deprive the debtor of all benefit, under the act of 1805, for, although as a punishment on a debtor for giving such undue preference, the law withholds from *him* its benefits, it does not operate to the prejudice of the preferred creditor. Vide 4 Har. & Johns. 68—107, Owings and Chester, vs. Nicholson and Williams.

Allegations by a creditor against an insolvent debtor cannot be removed under a suggestion to an adjoining county for trial. 4 Har. & Johns. p. 227, Michael, vs. Schroeder and others.

* Quere.—How would the decision of a similar case be affected by the law of 19th February, 1824, by which sci. fa. is rendered necessary only in case three years have elapsed since the rendition of the judgment?

Decisions.

The certificate of the justices of the peace of their proceedings under the act of 1774, c. 28. relative to insolvents, is *itself* evidence of the facts it contains, and a party claiming, under such proceedings, is not compelled to prove such facts *aliunde* the certificate. It is in this case made a question, whether proceedings under the insolvent laws are liable to all objections, incident to those of other special and limited authority. Vide 5 Har. & Johns. p. 181. Winingder vs. Diffendeffer's Lessee.

A discharge of an insolvent, under the act of 1774, c. 28. will not release him of a debt contracted subsequent to the passage of that act, although both himself and his creditor were citizens of this state at the date of such discharge. Gorden, vs. Turner, 5 Har. & Johns. 369.

There is no adequate provision in the general insolvent laws of this state for dispossessing an insolvent debtor of his property from the time of his application for relief. A provisional trustee appointed under the act of 1816, c. 22. § 2, is to take possession of the insolvent's property—but no power is given to him (*by that act*) to recover such property from third persons. When that is to be done, there being no permanent trustee, the name of the insolvent must be used. 5 Har. & Johns. 403.

The possession only passes to the provisional trustee, and the absolute property remaining with the insolvent until a permanent trustee is appointed—in whom, by operation of the insolvent acts, the title to the property vests.

The provisional trustee has the power only to possess and preserve the insolvent's property for the benefit of his creditors, and for the protection of that right, he may sue, if his possession be invaded.—Ib.

To render void a deed of assignment by an insolvent, it must be made with a view and under the expectation of becoming an insolvent debtor, and with an intent thereby to give an undue and improper preference, (Per Chase, C. J.)—Ib.

The time when a person becomes an insolvent, debtor under the insolvent laws, is when he files his petition for the benefit of those laws.—Ib.

An assignment made by an insolvent, through coercion of those laws, is not an undue and improper preference. Before a final release can be obtained by an insolvent, the trustee must certify to the court, that he has received all the property contained in the insolvent's schedule.—Ib.

When there is no final discharge, the petition of the insolvent and all the proceedings under it are ineffectual and void,

Decisions.

and the property will be divested out of the Trustee and revert to the petitioner, and vest in him by operation of law, as a resulting trust, the original object of the trust having failed and will be liable to be operated on and affected under the general laws as the property of the petitioner. *Ib. Kennedy* vs. *Boggs.*

A promise by a debtor after his discharge under a bankrupt law, to pay a prior debt, waives the discharge, and the debt is a sufficient consideration for the promise.

The promise must however, be express, and if a condition be annexed to it, the condition must be complied with. Vide Yates, admrs. vs. Hollingsworth, 5 Har. & Johns.

State's use of Rogers vs. Krebs et al Garnishees of Horne.

The court of appeals has adopted and considers itself bound by the decision of the supreme court of the U. S. respecting the state insolvent laws, (which decision is, that a discharge in pursuance of a state insolvent law cannot constitutionally have the effect to release the future acquisitions of an insolvent petitioner.) 6 Har. & Johns 31; (but quere—does not the appellate court of Maryland, consider itself bound also by the contra decision in Ogden vs. Saunders, 12 Wheaton 213?)

A transfer of property by a debtor to a creditor, with a view, or under an expectation of becoming insolvent, is made void by the act of 1812 c 77, § 1, only for the purpose of vesting the property in the trustee of such debtor for the benefit of his general creditors. Harding vs. Stevenson, 6 Har. & Johns, 264.

A provisional trustee is bound, when demanded, to deliver over to the permanent trustee the estate and effects of the insolvent. Williams vs. Ellicott, 6 Har. & Johns 427.

If the provisional trustee were entitled to a reasonable compensation for his services as such, (quere if he were so entitled?) he forfeited any claim which he might so have had by refusing to deliver over the estate and effects to the permanent trustee. *Ib.*

For the same reason he is liable for interest on the amount of funds in his hands. It is made a question in this case whether the U. S. in case of a delivery by a provisional trustee of the estate and effects of an insolvent to the permanent trustee, could maintain their right of priority so as to subject the provisional trustee to personal liability by reason of his having so delivered over the effects without first discharging a debt due to the government from the insolvent? *Ib.*

The provision in the 5th sec. of act of Congress, of 1803,

Decisions.

c. 84 for the relief of insolvents of the district of Columbia, (that "no process against the real or personal property of the debtor shall have any effect or operation, except process of execution or attachment in the nature of execution, which shall have been put into the hands of the marshal, antecedent to the application,") cannot nullify the effect of a lien acquired by a creditor on the personal property of the debtor in this state, where such creditor had, before the application of the debtor for the benefit of that law, delivered to the sheriff in this state, a writ of fi. fa. against the property of such debtor. Lilly vs. Magruder, 6, Har. & Johns 458.

In Lucas, trustee of Jameson vs. Latour, it was decided that Trover for goods mortgaged to secure a usurious debt, cannot be sustained, unless the plaintiff has tendered the amount actually loaned.

If the party by whom such debt is contracted becomes insolvent, his trustee is equally bound to make such tender to entitle him to recover the goods mortgaged. 6 Har. & Johns 100.

The assets of insolvents are distributable according to equity. McCulloh vs. Dashiells, admr. 1 Har. & Gill 96.

An appeal does not lie from the refusal of the county court, on motion of an insolvent, to grant a rule on the trustee of such insolvent who had given the usual bond, requiring him to shew cause why his appointment should not be revoked.—Chase vs. Glenn 1, Har. & Gill 160.

The provisional trustee of an insolvent, appointed under the act of 1816 c 221, is the mere recipient of the property of the insolvent which the law contemplates his obtaining immediate possession of, from the insolvent himself, and not by suit against a third person. 2 Har. & Gill 24, Brown vs. Brice, Trustee of Causten.

Such a trustee is not authorized to assign the insolvent's judgments, and where one purchased such a judgment from that trustee and collected the amount, he is answerable for the amount received by him, to the permanent trustee in an action for money, had and received. Ibid.

Bonds with condition for the appearance of insolvent debtors made to the state as obligee are sanctioned by the uniform practice of twenty years, although the acts of assembly under which they are required to be executed, contain no specific provision for making them to the state. and the creditors may bring suits on them for their use, though not expressly authorized by law to sue. State's use, &c. vs. Klersted &c. 1 Gill & Johnson.

DECISIONS

OF THE

U. S.—SUPREME COURT.

In all cases of insolvency, of their debtor, the United States are entitled to priority of payment out of his effects. United States vs. Fisher et al. — 2 Cranch, 358.

The United States have no lien on the real estate of their debtor until suit brought or bankruptcy or notorious insolvency has taken place, or being unable to pay *all* his debts, he has made a voluntary assignment of *all* his property, or having absconded, his property has been *attached* by process of law. — 3 Cranch, 73. United States v. Hooe.

The voluntary assignment here mentioned seems to have been admitted by the court and counsel to mean, not an assignment *without consideration*, but one made without compulsion of law, as in cases under a bankrupt law. See also United States Bank vs. Weisiger, 2 Peters, 331.

A. endorses notes for B. upon the faith of the guaranty of C. When C. the guaranty is insolvent, a court of equity will not decree the money raised for his indemnity, to be paid to him without security, that the debt to the principal creditor shall be satisfied. — Russel, v. Clark. 7 Cranch, 71.

In cases of insolvency, the United States, are not entitled to priority of payment, unless the insolvency be a legal and known insolvency, manifested by some notorious act of the debtor pursuant to law. — Prince, v. Bartlett. 8 Cranch, 431.

It seems that a discharge under the act of assembly of Rhode Island, of 1756, from all debts, duties, contracts and demands, outstanding at the time of such discharge, upon surrender of all the debtor's property, will not protect himself against a debt contracted in a foreign country; nor will such a discharge render his answer as defendant in chancery, or his deposition evidence against his co-defendant. — Clark's Exrs. v. Van Rumsdyk, 9 Cranch, 155.

1819.

STURGES v. CROWNINSHIELD.

Sturges. v. Crowninshield.

THIS was an action of assumpsit brought in the Circuit Court of Massachusetts, against the defendant, as the maker of two promissory notes, both dated at New-York, on the 22d of March, 1811 for the sum of 771 dollars and 86 cents each, and payable to the plaintiff, one on the 1st and the other on the 15th of August, 1811. The defendant pleaded his discharge under "An act for the benefit of insolvent debtors and their creditors," passed by the legislature of New-York, 3d day of April, 1811. After stating the provisions of the said act, the defendant's plea averred his compliance with them, and that he was discharged, and a certificate given to him the fifteenth day of February, 1812. To this plea there was a general demurrer and joinder. At the October term of the Circuit Court, 1817, the cause came on to be argued and heard on the said demurrer, and the following questions arose, to wit:

1. Whether, since the adoption of the constitution of the United States, any State has authority to pass a bankrupt law, or whether the power is exclusively vested in the Congress of the United States.

2. Whether the Act of New-York, passed the third day of April, 1811, and stated in the plea in this case, is a bankrupt act, within the meaning of the constitution of the United States?

3. Whether the act aforesaid is an act or law impairing the obligation of contracts, within the meaning of the constitution of the United States?

4. Whether the plea is a good and sufficient bar of the plaintiff's action?

And after hearing counsel upon the questions, the Judges of the Circuit Court were opposed in opinion thereupon; and upon motion of the plaintiff's counsel, the questions were certified to

Feb. 17th. the Supreme Court, for their final decision.

Mr. Chief Justice MARSHALL delivered the opinion of the Court. This case is adjourned from the Court of the United States, for the first circuit and the district of Massachusetts, on several points on which the judges of that Court were divided, which are stated in the record for the opinion of this Court. The first is,

Since the adoption of the constitution of

Whether since the adoption of the constitution of the United States, any State has authority to pass a bankrupt law, or whether the power is exclusively vested in the Congress of the United States?

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This question depends on the following clause, in the 8th section of the 1st article of the constitution of the United States.

"The Congress shall have power, &c. to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States?"

The counsel for the plaintiff contend, that the grant of this power to Congress, without limitation, takes it entirely from the several States.

In support of this proposition they argue, that every power given to Congress is necessarily supreme; and, if, from its nature, or from the words of grant, it is apparently intended to be exclusive, it is as much so as if the States were expressly forbidden to exercise it.

These propositions have been enforced and illustrated by many arguments, drawn from different parts of the constitution. That the power is both unlimited and supreme, is not questioned. That it is exclusive, is denied by the counsel for the defendant.

In considering this question, it must be recollected that, previous to the formation of the new constitution, we were divided into independent States, united for some purposes, but, in most respects, sovereign. These states could exercise almost every legislative power, and, among others, that of passing bankrupt laws. When the American people created a national legislature, with certain enumerated powers, it was neither necessary nor proper to define the powers retained by the States. These powers proceed, not from the people of America, but from the people of the several States; and remain, after the adoption of the constitution, what they were before, except so far as may be abridged by that instrument. In some instances, as in making treaties, we find an express prohibition; and this shows the sense of the Convention to have been, that the mere grant of a power to Congress, did not imply a prohibition on the States to exercise the same power. But it has never been supposed, that this concurrent power of legislation extended to every possible case in which its exercise by the States has not been expressly prohibited. The confusion resulting from such a practice would be endless. The principle laid down by the counsel for the plaintiff, in this respect, is undoubtedly correct. Whenever the terms in which a power is granted to Congress, or the nature of the power, require that it should be exercised exclusively by Congress, the subject is as completely taken from the State Legislatures, as if they had been expressly forbidden to act on it.

the U. States a State has authority to pass a bankrupt, law, provided such law does not impair the obligation of contracts with in the meaning of the 10th sec. of the 1st art. of the constitution, and provided there be no act of Congress in force to establish a uniform system of bankruptcy conflicting with such law.

Whenever the term in which a power is granted by the constitution to Congress or whenever the nature of the power itself, require that it should be exercised exclusively by Congress, the subject is as completely taken away from the State legislature, as if they had been expressly forbidden to act on it.

The power granted to

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Congress, of establishing uniform laws on the subject of bankruptcies, is not of this description.

Is the power to establish uniform laws on the subject of bankruptcies, throughout the United States, of this description?

The peculiar terms of the grant certainly deserve notice. Congress is not authorized merely to pass laws, the operation of which shall be uniform, but to *establish* uniform laws on the subject throughout the United States. This *establishment* of *uniformity*, is perhaps, incompatible with state legislation, on that part of the subject to which the acts of Congress may extend. But the subject is divisible in its nature into bankrupt and insolvent laws; though the line of partition between them is not so distinctly marked as to enable any person to say, with positive precision, what belongs exclusively to the one, and not to the other class of laws. It is said, for example, that laws which merely liberate the person are insolvent laws, and those which discharge the contract, are bankrupt laws. But if an act of Congress should discharge the person of the bankrupt, and leave his future acquisitions liable to his creditors, we should feel much hesitation in saying that this was an insolvent, not a bankrupt act; and, therefore, unconstitutional. Another distinction has been stated, and has been uniformly observed. Insolvent laws operate at the instance of an imprisoned debtor; bankrupt laws at the instance of a creditor. But should an act of Congress authorize a commission of bankruptcy to issue on the application of a debtor, a court would scarcely be warranted in saying, that the law was unconstitutional, and the commission a nullity.

When laws of each description may be passed by the same legislature, it is unnecessary to draw a precise line between them. The difficulty can arise only in our complex system, where the legislature of the Union possesses the power of enacting bankrupt laws; and those of the States, the power of enacting insolvent laws. If it be determined that they are not laws of the same character, but are as distinct as bankrupt laws and laws which regulate the course of descents, a distinct line of separation must be drawn, and the power of each government marked with precision. But all perceive that this line must be in a great degree arbitrary. Although the two systems have existed apart from each other, there is such a connection between them as to render it difficult to say how far they may be blended together. The bankrupt law is said to grow out of the exigencies of commerce, and to be applicable solely to traders; but it is not easy to say who must be excluded from, or may be included within, this description. It is, like every other

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part of the subject, one on which the Legislature may exercise an extensive discretion.

This difficulty of discriminating with any accuracy between insolvent and bankrupt laws, would lead to the opinion, that a bankrupt law may contain those regulations which are generally found in an insolvent law; and that an insolvent law may contain those which are common to a bankrupt law. If this be correct, it is obvious that much incovenience would result from that construction of the constitution, which should deny to the State Legislatures the power of acting on this subject, in consequence of the grant to Congress. It may be thought more convenient, that much of it should be regulated by State legislation, and Congress may purposely omit to provide for many cases to which their power extends. It does not appear to be a violent construction of the constitution, and is certainly a convenient one, to consider the power of the States as existing over such cases as the laws of the Union may not reach. But be this as it may, the power granted to Congress may be exercised or declined, as the wisdom of that body shall decide. If, in opinion of Congress, uniform laws concerning bankruptcies ought not to be established, it does not follow that partial laws may not exist, or that State legislation on the subject must cease. It is not the mere existence of the power, but its exercise, which is incompatible with the exercise of the same power by the States. It is not the right to establish these uniform laws, but their actual establishment, which is inconsistent with the partial acts of the States.

The right of the States to pass bankrupt laws is not extinguished by the enactment of a uniform bankrupt law, throughout the Union by Congress; it is only suspended so far as the two laws conflicts.

It has been said, that Congress has exercised this power; and, by doing so, has extinguished the power of the States, which cannot be revived by repealing the law of Congress.

We do not think so. If the right of the States to pass a bankrupt law is not taken away by the mere grant of the power to Congress, it cannot be extinguished; it can only be suspended, by the enactment of a general bankrupt law. The repeal of that law cannot, it is true, confer the power on the States; but it removes a disability to its exercise, which was created by the act of Congress.

Without entering farther into the delicate inquiry respecting the precise limitations which the several grants of power to Congress, contained in the constitution, may impose on the State Legislatures, than is, necessary for the decision of the question before the Court, it is sufficient to say, that until the power to pass uniform laws on the subject of bankruptcies be exercised by Congress, the States are not forbidden to pass a bankrupt law, provided it contain no principle which violates the 10th

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section of the first article of the constitution of the United States.

This opinion renders it totally unnecessary to consider the question whether the law of New-York is, or is not, a bankrupt law.

We proceed to the great question on which the cause must depend. Does the law of New-York, which is pleaded in this case, impair the obligation of contracts, within the meaning of the constitution of the United States?

This act liberates the person of the debtor, and discharges him for all liability for any debt previously contracted, on his surrendering his property in the manner it prescribes.

What is the *obligation* of a contract, and what will *impair* it.

In discussing the question whether a State is prohibited from passing such a law as this, our first inquiry is into the meaning of words into common use, What is the obligation of a contract? and what will impair it?

It would seem difficult to substitute words which are more intelligible, or less liable to misconstruction, than those which are to be explained. A contract is an agreement in which a party undertakes to do, or not to do, a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. In the case at bar, the defendant has given his promissory note to pay the plaintiff a sum of money on or before a certain day. The contract binds him to pay that sum on that day; and this is its obligation. Any law which releases a part of this obligation, must, in the literal sense of the word, impair it. Much more must a law impair it which makes it totally invalid, and entirely discharges it.

The words of the constitution, then, are express, and incapable of being misunderstood. They admit of no variety of construction, and are acknowledged to apply to that species of contract, an engagement between man and man for the payment of money, which has been entered into by these parties. Yet the opinion that this law is not within the prohibition of the constitution has been entertained by those who are entitled to great respect, and has been supported by arguments which deserve to be seriously considered.

It has been contended, that as a contract can only bind a man to pay to the full extent of his property, it is an implied condition that he may be discharged on surrendering the whole of it.

The obligation of a contract is not

But it is not true that the parties have in view only the property in possession when the contract is formed, or that its obligation does not extend to future acquisitions. Industry, talents, and integrity, constitute a fund which is as confidently trusted as

property itself. Future acquisitions are, therefore, liable for contracts; and to release them from this liability impairs their obligation.

It has been argued, that the States are not prohibited from passing bankrupt laws, and that the essential principle of such laws is to discharge the bankrupt from all past obligations; that the States have been in the constant practice of passing insolvent laws, such as that of New-York, and if the framers of the constitution had intended to deprive them of this power, insolvent laws would have been mentioned in the prohibition; that the prevailing evil of the times, which produced this clause in the constitution, was the practice of emitting paper money, of making property which was useless to the creditor a discharge of his debt, and of changing the time of payment by authorizing distant instalments. Laws of this description, not insolvent laws, constituted, it is said, the mischief to be remedied; and laws of this description, not insolvent laws, are within the true spirit of the prohibition.

fulfilled by a *cessio bonorum*. The parties have not merely in view the property in possession when the contract is formed, but its obligation extends to future acquisitions.

The constitution does not grant to the States the power of passing bankrupt laws, or any other power; but finds them in possession of it, and may either prohibit its future exercise entirely, or restrain it so far as national policy may require. It has so far restrained it as to prohibit the passage of any law impairing the obligation of contracts. Although, then, the States may, until that power shall be exercised by Congress, pass laws concerning bankrupts; yet they cannot constitutionally introduce into such laws a clause which discharges the obligations the bankrupt has entered into. It is not admitted that, without this principle, an act cannot be a bankrupt law; and if it were, that admission would not change the constitution, nor exempt such acts from its prohibitions.

Although the States may, until that power is exercised by Congress, pass laws concerning bankrupts, yet they cannot constitutionally introduce into such laws a clause which discharges the obligation the bankrupt has entered into.

The argument drawn from the omission in the constitution to prohibit the States from passing insolvent laws, admits of several satisfactory answers. It was not necessary, nor would it have been safe, had it even been the intention of the framers of the constitution to prohibit the passage of all insolvent laws, to enumerate particular subjects to which the principle they intended to establish should apply. The principle was the inviolability of contracts. This principle was to be protected in whatsoever form it might be assailed. To what purpose enumerate the particular modes of violation which should be forbidden, when it was intended to forbid all? Had an enumeration of all the laws which might violate contracts been attempted, the provision must have been less complete, and involved in more perplexity than it now is. The plain and simple declara-

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tion, that no State shall pass any law impairing the obligation of contracts, includes insolvent laws and all other laws, so far as they infringe the principle the Convention intended to hold sacred, and no farther.

But a still more satisfactory answer to this argument is, that the Convention did not intend to prohibit the passage of all insolvent laws. To punish honest insolvency by imprisonment for life, and to make this a constitutional principle, would be an excess of inhumanity which will not readily be imputed to the illustrious patriots who framed our constitution, nor to the people who adopted it. The distinction between the obligation of a contract, and the remedy given by the legislature to enforce that obligation, has been taken at the bar, and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct. Confinement of the debtor may be a punishment for not performing his contract, or may be allowed as a means of inducing him to perform it. But the State may refuse to inflict this punishment, or may withhold this means, and leave the contract in full force. Imprisonment is no part of the contract, and simply to release the prisoner does not impair its obligation. No argument can be fairly drawn from the 61st section of the act for establishing a uniform system of bankruptcy, which militates against this reasoning. That section declares, that the act shall not be construed to repeal or annul the laws of any State *then in force* for the relief of insolvent debtors, except so far as may respect persons and cases clearly within its purview; and in such cases it affords its sanction to the relief given by the insolvent laws of this State, if the creditor of the prisoner shall not, within three months, proceed against him as a bankrupt.

Distinction between a law impairing the obligation of contracts, and a law modifying the remedy given by the legislature to enforce the obligation.

Imprisonment of the debtor is no part of the contract, and he may be released from imprisonment without impairing its obligation.

The 61st sec. of the act of Congress of 1800, c. 173. for establishing a uniform system of bankruptcy; does not confirm State insolvent laws, containing a provision impairing the obligation of contracts; but merely leaves them to operate, so far as constitutionally they may, unaffected by the act of Congress, except where that may apply to individual cases.

The insertion of this section indicates an opinion in Congress, that insolvent laws might be considered as a branch of the bankrupt system, to be repealed or annulled by an act for establishing that system, although not within its purview. It was for that reason only that a provision against this construction could be necessary. The last member of the section adopts the provisions of the State laws so far as they apply to cases within the purview of the act.

This section certainly attempts no construction, nor does it suppose any provision in the insolvent laws impairing the obligation of contracts. It leaves them to operate, so far as constitutionally they may, unaffected by the act of Congress, except where that act may apply to individual cases.

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The argument which has been pressed most earnestly at the bar, is, that although all legislative acts which discharge the obligation of a contract without performance, are within the very words of the constitution, yet an insolvent act, containing this principle, is not within its spirit, because such acts have been passed by Colonial and State Legislatures from the first settlement of the country, and because we know from the history of the times, that the mind of the Convention was directed to other laws which were fraudulent in their character, which enabled the debtor to escape from his obligation, and yet hold his property, not to this, which is beneficial in its operation.

Before discussing this argument, it may not be improper to premise that, although the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operation. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent, unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application.

This is certainly not such a case. It is said the Colonial and State Legislatures have been in the habit of passing laws of this description for more than a century; that they have never been the subject of complaint, and, consequently, could not be within the view of the general Convention.

The fact is too broadly stated. The insolvent laws of many, indeed, of by far the greater number of the States, do not contain this principle. They discharge the person of the debtor, but leave his obligation to pay in full force. To this the constitution is not opposed.

But, were it even true that this principle had been introduced generally into those laws, it would not justify our varying the construction of the section. Every State in the Union, both while a colony and after becoming independent, had been in

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the practice of issuing paper money; yet this practice is in terms prohibited. If the long exercise of the power to emit bills of credit did not restrain the Convention from prohibiting its future exercise, neither can it be said that the long exercise of the power to impair the obligation of contracts, should prevent a similar prohibition. It is not admitted that the prohibition is more express in the one than in the other. It does not indeed extend to insolvent laws by name, because it is not a law by name, but a principle which is to be forbidden; and this principle is described in as appropriate terms as our language affords.

Neither, as we conceive, will any admissible rule of construction justifying us in limiting the prohibition under consideration, to the particular laws which have been described at the bar, and which furnished such cause for general alarm. What were those laws?

The prohibition in the constitution against the States making any law impairing the obligation of contracts, does not extend to paper money or tender laws because these subjects are expressly provided for; nor is it to be limited to instalment or suspension laws, because the terms of the prohibition are general and comprehensive, and establish the principle of the inviolability of contracts in every mode.

We are told they were such as grew out of the general distress following the war in which our independence was established. To relieve this distress, paper money was issued, worthless lands, and other property of no use to the creditor, were made a tender in payment of debts: and the time of payment, stipulated in the contract, was extended by law. These were the peculiar evils of the day. So much mischief was done, and so much more was apprehended, that general distrust prevailed, and all confidence between man and man was destroyed. To laws of this description therefore, it is said, the prohibition to pass laws impairing the obligation of contracts ought to be confined.

Let this argument be tried by the words of the section under consideration.

Was this general prohibition intended to prevent paper money? We are not allowed to say so, because it is expressly provided, that no State shall "emit bills of credit;" neither could these words be intended to restrain the States from enabling debtors to discharge their debts by the tender of property of no real value to the creditor, because for that subject also particular provision is made. Nothing but gold and silver coin can be made a tender in payment of debts.

It remains to inquire, whether the prohibition under consideration could be intended for the single case of a law directing that judgments should be carried into execution by instalments?

This question will scarcely admit of discussion. If this were the only remaining mischief against which the constitution intended to provide, it would undoubtedly have been, like paper

money and tender laws, expressly forbidden. At any rate, terms more directly applicable to the subject, more appropriately expressing the intention of the Convention, would have been used. It seems scarcely possible to suppose that the framers of the constitution, if intending to prohibit only laws authorizing the payment of debts by instalment, would have expressed that intention by saying "no State shall pass any law impairing the obligation of contracts." No men would so express such an intention. No men would use terms embracing a whole class of laws, for the purpose of designating a single individual of that class. No court can be justified in restricting such comprehensive words to a particular mischief to which no allusion is made.

The fair, and, we think, the necessary construction of the sentence, requires, that we should give these words their full and obvious meaning. A general dissatisfaction with that lax system of legislation which followed the war of our revolution undoubtedly directed the mind of the Convention to this subject. It is probable that laws such as those which have been stated in argument, produced the loudest complaints, were most immediately felt. The attention of the Convention, therefore, was particularly directed to paper money, and to acts which enabled the debtor to discharge his debt, otherwise than was stipulated in the contract. Had nothing more been intended, nothing more would have been expressed. But, in the opinion of the Convention, much more remained to be done. The same mischief might be effected by other means. To restore public confidence completely, it was necessary not only to prohibit the use of particular means by which it might be effected, but to prohibit the use of any means by which the same mischief might be produced. The Convention appears to have intended to establish a great principle, that contracts should be inviolable. The constitution, therefore, declares, that no State shall pass "any law impairing the obligation of contracts."

If, as we think, it must be admitted that this intention might actuate the Convention; that it is not only consistent with, but is apparently manifested by, all that part of the section which respects this subject; that the words used are well adapted to the expression of it; that violence would be done to their plain meaning by understanding them in a more limited sense; those rules of construction, which have been consecrated by the wisdom of ages, compel us to say, that these words prohibit the passage of any law discharging a contract without performance.

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By way of analogy, the statutes of limitations, and against usury, have been referred to in argument; and it has been supposed that the construction of the constitution, which this opinion maintains, would apply to them also, and must therefore be too extensive to be correct.

Statutes of limitation and usury laws, unless retroactive in their effect, do not impair the obligation of contracts.

We do not think so. Statutes of limitations relate to the remedies which are furnished in the courts. They rather establish, that certain circumstances shall amount to evidence that a contract has been performed, than dispense with its performance. If, in a State where six years may be pleaded in bar to an action of assumpsit, a law should pass declaring that contracts already in existence, not barred by the statute, should be construed to be within it, there could be little doubt of its unconstitutionality.

So with respect to the laws against usury. If the law be, that no person shall take more than six per centum per annum for the use of money, and that, if more be reserved, the contract shall be void, a contract made thereafter, reserving seven per cent., would have no obligation in its commencement; but if a law should declare that contracts already entered into, and reserving the legal interest, should be usurious and void, either in the whole or in part, it would impair the obligation of the contract, and would be clearly unconstitutional.

This opinion confined to the case actually under consideration.

This opinion is confined to the case actually under consideration. It is confined to a case in which a creditor sues in a court, the proceedings of which the legislature, whose act is pleaded, had not a right to control, and to a case where the creditor had not proceeded to execution against the body of his debtor, within the State whose law attempts to absolve a confined insolvent debtor from his obligation. When such a case arises, it will be considered.

It is the opinion of the court, that the act of the State of New York, which is pleaded by the defendant in this cause, so far as its attempts to discharge this defendant from the debt in the declaration mentioned, is contrary to the constitution of the United States, and that the plea is no bar to the action. (4 Wheaton, p. 122.)

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M'Millan v. M'Neill

M'MILLAN v. M'NEILL. (4 *Wheaton, p.* 209.)

ERROR to the District Court of Louisiana.

This was a suit brought by M'Neill, the plaintiff below, against M'Millan, the defendant below, to recover a sum of money paid for the defendant's use, under the following circum-

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stances: M'Millan, residing in Charleston, South Carolina, transacting business there as a partner of the house of trade of Sloane & M'Millan, of Liverpool, on the 8th of October and 9th of November, 1811, imported foreign merchandise, on which he gave bonds at the custom house, with M'Neill and one Walton, as sureties. These bonds were payable the 8th of April, and 9th of May, 1812, and were paid, after suit and judgment, by M'Neill, on the 23d of August and 23d of September, 1813. Some time afterwards, M'Millan removed to New-Orleans; where, on the 23d of August, 1815, the District Court of the first district of the State of Louisiana, having previously taken into consideration his petition, under a law of the State of Louisiana, passed in 1808, praying for the benefit of the *cessio bonorum*, and a full and entire release and discharge, as well in his person as property, from all debts, dues, claims, and obligations, then existing, due, or owing by him, the said M'Millan, and it having appeared fully and satisfactorily, that the requisite proportion of his creditors, as well in number as amount, had accepted the cession of his goods, and had granted a full and entire discharge, as well with respect to his person as to his future effects, it was then and there ordered, adjudged and decreed, by the said court, that the proceedings be homologated and confirmed, and that the said M'Millan be acquitted, released, and discharged, as well his person as his future effects, from the payment of any and all debts, dues, and demands, of whatever nature, due and owing by him previous to the day of the date of the commencement of said proceedings, to wit, previous to the 12th day of August, 1815. The house of trade of Sloane & M'Millan, of Liverpool, having failed, a commission of bankruptcy issued against both the partners in England, on the 28th of September, 1812, and on the 28th of November, 1812, they both obtained certificates of discharge, signed by the commissioners, and sanctioned by the requisite proportion of creditors in number and value, and confirmed by the Lord Chancellor of Great Britain, according to the bankrupt laws of England. On the 1st of July, 1817, the present suit was instituted by M'Neill, describing himself as a citizen of South Carolina, against M'Millan, described as a citizen of Louisiana, in the District Court of the United States for the district of Louisiana, (having Circuit Court powers,) to recover the sum of 700 dollars, which M'Neill had paid, under the judgments on the custom house bonds, in South Carolina. To this suit M'Millan pleaded in bar his certificates, under the Louisiana and English bankrupt laws; to which plea the plaintiff below demurred, the de-

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fendant joined in demurrer, and the court gave judgment for the plaintiff; from which judgment the cause was brought, by writ of error, to this Court.

Mr. Chief Justice MARSHALL delivered the opinion of the Court, that this case was not distinguishable in principle from the preceding case of Sturges v. Crowninshield. That the circumstance of the State law, under which the debt was attempted to be discharged, having been passed before the debt was contracted, made no difference in the application of the principle. And that as to the certificate under the English bankrupt laws, it had frequently been determined, and was well settled, that a discharge under a foreign law, was no bar to an action on a contract made in this country.

Judgment affirmed.

Farmers and Mechanics' Bank of Penn. v. Smith.

The case next claiming our attention is that of "The Farmers and Mechanics' Bank of Pennsylvania v. Smith. 6 Wheaton, 131.

This was an action of assumpsit brought by the plaintiffs in error, in the Supreme Court of the commonwealth of Pennsylvania, against the defendant in error as endorser of a promissory note made at Philadelphia, by one Edward Shoemaker, on the 6th June, 1811, for $2.500, payable in six months after date, and endorsed by the defendant to the plaintiffs at the same place on the same day.—The declaration was in the usual form, and the defendant pleaded, that on the 8th day of September, 1812, he was a citizen of the said commonwealth, residing in the city and county of Philadelphia, and having resided there for more than two years before that time, and that being such citizen and resident, he, the defendant, in conformity to the act of the legislature of Pennsylvania, passed 13th March, 1812, entitled "An Act for the relief of insolvent debtors residing in the city and county of Philadelphia," did on the 8th September, 1812, make application to the commissioner appointed by virtue of said act, for the benefit thereof, and was duly discharged under said act, having fully complied with all its requisitions.—That the commissioners gave him a certificate to that effect. The plea also averred, that the cause of action arose in the city and county of Philadelphia, from contracts made within the same, and that the plaintiffs and defendants were at the time the said contracts were made, and at the time the causes of action occurred, and at the time the said act passed, citizens of the state of Pennsylvania, and still continued to be citizens thereof.—To this plea there was a demurrer and judgment being rendered thereon for the

defendant, the cause was brought by writ of error to this court. 1819

At February term, 1821, Chief Justice MARSHALL delivered the opinion of the court, that this case was not distinguishable from its former decisions on the same subject, except by the circumstances, that the defendant in the present case, was a citizen of the same state with the plaintiffs, at the time the contract was made in that state, and remained such at the time the suit was commenced in its courts. But that these facts made no difference in the cases.—The constitution of the United States was made for the people of the whole union, and is equally binding upon all the courts and all the citizens.

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Judgment accordingly reversed.

The case of Ogden v. Saunders, 12 Wheaton, 213 has been more elaborately discussed, and has elicited more variant opinions from the several judges of the Supreme Judicial Tribunal of the Union, than any other case on the subject of insolvency, which has yet occurred.

OGDEN, Plaintiff in Error, *against* SAUNDERS, Defendant in Error. (12 Wheaton, page 213.)

ERROR to the District Court of Louisiana.

This was an action of assumpsit, brought in the Court below by the defendant in error, Saunders, a citizen of Kentucky, against the plaintiff in error, Ogden, a citizen of Louisiana. The plaintiff below declared upon certain bills of exchange, drawn on the 30th of September, 1806, by one Jordon, at Lexington, in the State of Kentucky, upon the defendant below, Ogden, in the city of New-York, (the defendant then being a citizen and resident of the State of New-York,) accepted by him at the city of New-York, and protested for non-payment.

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The defendant below pleaded several pleas, among which was a certificate of discharge under the act of the legislature of the State of New-York, of April 3d, 1801, for the relief of insolvent debtors, commonly called the *three-fourths act.*

The jury found the facts in the form of a special verdict, on which the Court rendered a judgment for the plaintiff below, and the cause was brought by writ of error before this Court. The question, which arose under this plea as to the validity of the law of New-York as being repugnant to the constitution of the United States, was argued at February term, 1824, by Mr. *Clay*, Mr. *D. B Ogden*, and Mr. *Haines*, for the plaintiff in error, and by Mr. *Webster* and Mr. *Wheaton*, for the defendant in error, and the cause was continued for advisement until the present term. It was again argued at the present term, (in connexion with several other causes standing on the calendar, and

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involving the general question of the validity of the bankrupt, or insolvent laws,) by Mr. *Webster* and Mr. *Wi* against the validity, and by the (Mr. Wirt) *Attorney Ge* Mr. *E. Levingston*, Mr. *D. B. Ogden*, Mr. *Jones*, and Mr. *S son*, for the validity.

Feb. 19th. The learned judges delivered their opinions as follows:

Mr. Justice WASHINGTON. The first and most impo point to be decided in this cause turns essentially upon the q tion, whether the obligation of a contract is impaired by a l bankrupt or insolvent law, which discharges the person and future acquisitions of the debtor from his liability under a tract entered into in that State after the passage of the act?

This question has never before been distinctly presented the consideration of this Court, and decided, although it been supposed by the judges of a highly respectable S Court, that it was decided in the case of *M'Millan* v. *M'N* (4 *Wheat. Rep.* 209.) That was the case of a debt contrac by two citizens of South Carolina, in that State, the discha of which had a view to no other State. The debtor afterwa removed to the territory of Louisiana, where he was regula discharged, as an insolvent, from all his debts, under an act the legislature of that State, passed prior to the time when t debt in question was contracted. To an action brought by t creditor in the District Court of Louisiana, the defendant ple in bar his discharge, under the law of that territory, and it w contended by the counsel for the debtor in this Court, that t law under which the debtor was discharged, having passed b fore the contract was made, it could not be said to impair i obligation. The cause was argued on one side only, and it wou seem from the report of the case, that no written opinion wa prepared by the Court. The Chief Justice stated that the ci cumstance of the state law, under which the debt was attemp ed to be discharged, having been passed before the debt wa contracted, made no difference in the application of the princi ple, which had been asserted by the Court in the case of *Stu ges* v. *Crowninshield.* The correctness of this position is believe to be incontrovertible. The principle alluded to was, that t State bankrupt law, which impairs the obligation of a contract is unconstitutional in its application to such contract. In tha case it is true, the contract preceded in order of time the act o assembly, under which the debtor was discharged, although it was not thought necessary to notice that circumstance in the opinion which was pronounced. The principle, however, re- mained in the opinion of the Court, delivered in *M'Millan* v.

M'Niell, unaffected by the circumstance that the law of Louisiana preceded a contract made in another State, since that law, having no extra-territorial force, never did at any time govern or affect the obligation of such contract. It could not, therefore be correctly said to be prior to the contract, in reference to its obligation, since if, upon legal principles, it could affect the contract, that could not happen until the debtor became a citizen of Louisiana, and that was subsequent to the contract. But I hold the principle to be well established, that a discharge under the bankrupt laws of one government, does not affect contracts made or to be executed under another, whether the law be prior or subsequent in the date to that of the contract; and this I take to be the only point really decided in the case alluded to. Whether the Chief Justice was correctly understood by the Reporter, when he is supposed to have said, "that this case was not distinguishable in principle from the preceding case of *Sturges v. Crowninshield*," it is not material at this time to inquire, because I understand the meaning of these expressions to go no farther than to intimate, that there was no distinction between the cases as to the constitutional objection, since it professed to discharge a debt contracted in another State, which, at the time it was contracted, was not within its operation, nor subject to be discharged by it. The case now to be decided, is that of a debt contracted in the State of New-York, by a citizen of that State, from which he was discharged, so far as he constitutionally could be, under a bankrupt law of that State, in force at the time when the debt was contracted. It is a case, therefore, that bears no resemblance to the one just noticed.

I come now to the consideration of the question, which, for the first time, has been directly brought before this Court for judgment. I approach it with more than ordinary sensibility, not only on account of its importance, which must be acknowledged by all, but of its intrinsic difficulty, which every step I have taken in arriving at a conclusion with which my judgment could in any way be satisfied, has convinced me attends it. I have examined both sides of this great question with the most sedulous care, and the most anxious desire to discover which of them, when adopted, would be most likely to fulfil the intentions of those who framed the constitution of the United States. I am far from asserting that my labours have resulted in entire success. They have led me to the only conclusion by which I can stand with any degree of confidence; and yet, I should be disingenuous were I to declare, from this place, that I embrace it without hesitation, and without a doubt of its correctness.

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The most that candour will permit me to say upon the subject is, that I see, or think I see, my way more clear on the side which my judgment leads me to adopt, than on the other, and it must remain for others to decide whether the guide I have chosen has been a safe one or not.

It has constantly appeared to me, throughout the different investigations of this question, to which it has been my duty to attend, that the error of those who controvert the constitutionality of the bankrupt law under a consideration, in its application to this case, if they be in error at all, has arisen from not distinguishing accurately between a law which impairs a contract, and one which impairs its obligation. A contract is defined by all to be an agreement to do, or not to do, some particular act; and in the construction of this agreement, depending essentially upon the will of the parties between whom it is formed, we seek for their intention with a view to fulfil it. Any law, then, which enlarges, abridges, or in any manner changes this intention, when it is discovered, necessarily impairs the contract itself, which is but the evidence of that intention. The manner, or the degree, in which this change is effected, can in no respect influence this conclusion; for whether the law affect the validity, the construction, the duration, the mode of discharge, or the evidence of the agreement, it impairs the contract, though it may not do so to the same extent in all the supposed cases. Thus, a law which declares that no action shall be brought whereby to charge a person upon his agreement to pay the debt of another, or upon an agreement relating to lands, unless the same be reduced to writing, impairs a contract made by parol, whether the law precede or follow the making of such contract; and, if the argument that this law also impairs, in the former case, the obligation of the contract, be sound, it must follow, that the statute of frauds, and all other statutes which in any manner meddle with contracts, impair their obligation, and are, consequently, within the operation of this section and article of the constitution. It will not do to answer, that, in the particular case put, and in others of the same nature, there is no contract to impair, since the pre-existing law denies all remedy for its enforcement, or forbids the making of it, since it is impossible to deny that the parties have expressed their will in a form of a contract, notwithstanding the law denies to it any valid obligation.

This leads us to a critical examination of the particular phraseology of that part of the above section which relates to contracts. It is a law which impairs the obligation of contracts, and not the contracts themselves, which is interdicted. It is

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not to be doubted, that this term, *obligation*, when applied to contracts, was well considered and weighed by those who framed the constitution, and was intended to convey a different meaning from what the prohibition would have imported without it. It is this meaning of which we are all in search.

What is it, then, which constitutes the obligation of a contract? The answer is given by the Chief Justice, in the case of *Sturges* v. *Crowninshield*, to which I readily assent now, as I did then; it is the law which binds the parties to perform their agreement. The law, then, which has this binding obligation, must govern and control the contract in every shape in which it is intended to bear upon it, whether it affect its validity, construction, or discharge.

But the question, which law is referred to in the above definition, still remains to be solved. It cannot, for a moment, be conceded that the mere moral law is intended, since the obligation which that imposes is altogether of the imperfect kind, which the parties to it are free to obey, or not as they please. It cannot be supposed, that it was with this law the grave authors of this instrument were dealing.

The universal law of all civilized nations, which declare that men shall perform that to which they have agreed, has been supposed by the counsel who have argued this cause for the defendant in error, to be the law which is alluded to; and I have no objection to acknowledging its obligation, whilst I must deny that it is that which exclusively governs the contract. It is upon this law that the obligation which nations acknowledge to perform their compacts with each other is founded, and I, therfore, feel no objection to answer the question asked by the same counsel—what law it is which constitutes the obligation of the compact between Virginia and Kentucky? by admitting, that it is this common law of nations which requires them to perform it. I admit further, that it is this law which creates the obligation of a contract made upon a desert spot, where no municipal law exists, and (which was another case put by the same counsel) which contract, by the tacit assent of all nations, their tribunals are authorized to enforce.

But can it be seriously insisted, that this, any more than the moral law upon which it is founded, was exclusively in the contemplation of those who framed this constitution? What is the language of this universal law? It is simply that all men are bound to perform their contracts. The injunction is as absolute as the contracts to which it applies. It admits of no qualifica

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tion, and no restraint, either as to its validity, construction, or discharge, further than may be necessary to develope the intention of the parties to the contract. And if it be true, that this is exclusively the law to which the constitution refers us, it is very apparent, that the sphere of State legislation upon subjects connected with the contracts of individuals, would be abridged beyond what it can for a moment be believed the sovereign States of this Union would have consented to; for it would be found, upon examination, that there are few laws which concern the general police of a state, or the government of its citizens, in their intercourse with each other, or with strangers, which may not in some way or other affect the contracts which they have entered into, or may thereafter form. For what are laws of evidence, or which concern remedies frauds and perjuries—laws of registration, and those which affect landlord and tenant, sales at auction, acts of limitation, and those which limit the fees of professional men, and the charges of tavern keepers, and a multitude of others which crowd the codes of every State, but laws which may affect the validity, construction, or duration, or discharge of contracts? Whilst I admit, then, that this common law of nations, which has been mentioned, may form in part the obligation of a contract, I must unhesitatingly insist, that this law is to be taken in strict subordination to the municipal laws of the land where the contract is made, or is to be executed. The former can be satisfied by nothing short of performance; the latter may affect and control the validity, construction, evidence, remedy, performance and discharge of the contract. The former is the common law of all civilized nations, and of each of them; the latter is the peculiar law of each, and is paramount to the former whenever they come in collision with each other.

It is, then, the municipal law of the State, whether that be written or unwritten, which is emphatically the law of the contract made within the State, and must govern it throughout, wherever its performance is sought to be enforced.

It forms, in my humble opinion, a part of the contract, and travels with it wherever the parties to it may be found. It is so regarded by all the civilized nations of the world, and is enforced by the tribunals of those nations according to its own forms, unless the parties to it have otherwise agreed, as where the contract is to be executed in, or refers to the laws of, some other country than that in which it is formed, or where it is of an immoral character, or contravenes the policy of the nation to whose tribunals the appeal is made; in which latter cases, the

remedy which the comity of nations affords for enforcing the obligation of contracts wherever formed, is denied. Free from these objections, this law, which accompanies the contract as forming a part of it, is regarded and enforced every where, whether it affect the validity, construction, or discharge of the contract. It is upon this principle of universal law, that the discharge of the contract, or of one of the parties to it, by the bankrupt laws of the country where it was made, operates as a discharge every where.

If then, it be true, that the law of the country where the contract is made, or to be executed, forms a part of that contract, and of its obligation, it would seem to be somewhat of a solecism to say, that it does, at the same time, impair that obligation.

But, it is contended, that if the municipal law of the State where the contract is so made, form a part of it, so does that clause of the constitution which prohibits the States from passing laws to impair the obligation of contracts; and, consequently, that the law is rendered inoperative by force of its controlling associate. All this I admit, provided it be first proved, that the law so incorporated with, and forming a part of the contract, does, in effect, impair its obligation; and before this can be proved, it must be affirmed, and satisfactorily made out, that if, by the terms of the contract, it agreed that, on the happening of a certain event, as, upon the future insolvency of one of the parties, and his surrender of all his property for the benefit of his creditors, the contract shall be considered as performed and at an end, this stipulation would impair the obligation of the contract. If this proposition can be successfully affirmed, I can only say, that the soundness of it is beyond the reach of my mind to understand.

Again; it is insisted, that if the law of the contract forms a part of it, the law itself cannot be repealed without impairing the obligation of the contract. This proposition I must be permitted to deny. It may be repealed at any time at the will of the legislature, and then it ceases to form any part of those contracts *which may afterwards be entered into.* The repeal is no more void than a new law would be which operates upon contracts to affect their validity, construction, or duration. Both are valid, (if the view which I take of this case be correct,) as they may affect contracts afterwards formed; but neither are so, if they bear upon existing contracts; and, in the former case, in which the repeal contains no enactment, the constitution would

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forbid the application of the repealing law to past contracts, to those only.

To illustrate this argument, let us take four laws, which eit by new enactments, or by the repeal of former laws, may fect contracts as to their validity, construction, evidence, remedy.

Laws against usury are of the first description.

A law which converts a penalty, stipulated for by the pa ties, as the only atonement for a breach of the contract, into mere agreement for a just compensation, to be measured by t legal rate of interest, is of the second.

The statute of frauds, and the statute of limitations, may l cited as examples of the two last.

The validity of these laws can never be questioned by thos who accompany me in the view which I take of the questio under consideration, unless they operate, by their express pro visions, upon contracts previously entered into; and even the they are void only so far as they do so operate, because, in tha case, and in that case only, do they impair the obligation o those contracts. But if they equally impair the obligation o contracts subsequently made, which they must do if this be th operation of a bankrupt law upon such contracts, it would seem to follow, that all such laws, whether in the form of new enact ments, or of repealing laws, producing the same legal conse quences, are made void by the constitution; and yet the counsel for the defendants in error have not ventured to maintain so alarming a proposition.

If it be conceded that *those laws* are not repugnant to the constitution, so far as they apply to subsequent contracts, I am yet to be instructed how to distinguish between those laws, and the one now under consideration. How has this been attempted by the learned counsel who have argued this cause upon the ground of such a distinction?

They have insisted, that the effect of the law first supposed, is to annihilate the contract in its birth, or rather to prevent it from having a legal existence, and, consequently, that there is no obligation to be impaired. But this is clearly not so, since it may legitimately avoid all contracts afterwards entered into, which reserve to the lender a higher rate of interest than this law permits.

The validity of the second law is admitted, and yet this can only be in its application to subsequent contracts; for it has not, and I think it cannot, for a moment, be maintained, that a law which, in express terms, varies the construction of an existing

contract, or which, repealing a former law, is made to produce the same effect, does not impair the obligation of that contract.

The statute of frauds, and the statute of limitations, which have been put as examples of the third and fourth classes of laws, are also admitted to be valid, because they merely concern the modes of proceeding in the trial of causes. The former, supplying a rule of evidence, and the latter, forming a part of the remedy given by the legislature to enforce the obligation, and likewise providing a rule of evidence.

All this I admit. But how does it happen that these laws, like those which affect the validity and construction of contracts, are valid as to subsequent, and yet void as to prior and subsisting contracts? For we are informed by the learned judge who delivered the opinion of this Court in the case of *Sturges* v. *Crowninshield*, that, "if, in a State where six years may be pleaded in bar to an action of assumpsit, a law should pass, declaring that contracts already in existence, not barred by the statute, should be construed within it, there could be little doubt of its unconstitutionality."

It is thus most apparent, that, which ever way we turn, whether to laws affecting the validity, construction, or discharges of contracts, or the evidence or remedy to be employed in enforcing them, we are met by this overruling and admitted distinction, between those which operate retrospectively, and those which operate prospectively. In all of them the law is pronounced to be void in the first class of cases, and not so in the second.

Let us stop, then, to make a more critical examination of the act of limitations, which although it concerns the remedy, or, if it must be conceded, the evidence, is yet void or otherwise, as it is made to apply retroactively, or prospectively, and see if it can, upon any intelligible principle, be distinguished from a bankrupt law, when applied in the same manner? What is the effect of the former? The answer is, to discharge the debtor and all his future acquisitions from his contract; because he is permitted to plead it in bar of any remedy which can be instituted against him, and consequently in bar or destruction of the obligation which his contract imposed upon him. What is the effect of a discharge under a bankrupt law? I can answer this question in no other terms than those which are given to the former question. If there be a difference, it is one which, in the eye of justice at least, is more favourable to the validity of the latter than of the former; for in the one, the debtor surrenders every thing which he possesses towards the discharge

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of his obligation, and in the other, he surrenders nothing, sullenly shelters himself behind a legal objection with which law has provided him, for the purpose of protecting his per and his present, as well as his future acquisitions, against performance of his contract.

It is said that the former does not discharge him absolut from his contract, because it leaves a shadow sufficiently s stantial to raise a consideration for a new promise to pay. A is not this equally the case with a certificated bankrupt, w afterwards promises to pay a debt from which his certific had discharged him? In the former case, it is said, the defe dant must plead the statute in order to bar the remedy, and exempt him from his obligation. And so, I answer, he mu plead his discharge under the bankrupt law, and his conformi to it, in order to bar the remedy of his creditor, and to secu to himself a like exemption. I have, in short, sought in va for some other grounds on which to distinguish the two law from each other, than those which were suggested at the bar. can imagine no other, and I confidently believe that none exis which will bear the test of a critical examination.

To the decision of this Court, made in the case of *Sturges v Crowninshield*, and to the reasoning of the learned judge wh delivered that opinion, I entirely submit; although I did no then, nor can I now bring my mind to concur in that part of it which admits the constitutional power of the State legislatures to pass bankrupt laws, by which I understand, those laws which discharge the person and the future acquisitions of the bankrupt from his debts. I have always thought that the power to pass such law was exclusively vested by the constitution in the legislature of the United States. But it becomes me to believe that this opinion was, and is incorrect, since it stands condemned by the decision of a majority of this Court, solemnly pronounced.

After making this acknowledgment, I refer again to the above decision with some degree of confidence, in support of the opinion to which I am now inclined to come, that a bankrupt law, which operates prospectively, or in so far as it does so operate, does not violate the constitution of the United States. It is there stated, "that, until the power to pass uniform laws on the subject of bankruptcies be exercised by Congress, the States are not forbidden to pass a bankrupt law, provided it contain no principle which violates the tenth section of the first article of the constitution of the United States." The question in that case was, whether the law of New York, passed on

the third of April, 1811, which liberates, not only the person of the debtor, but discharges him from all liability for any debt contracted previous, as well as subsequent to his discharge, on his surrendering his property for the use of his creditors, was a valid law under the constitution in its application to a debt contracted prior to its passage? The Court decided that it was not, upon the single ground that it impaired the obligation of that contract. And if it be true, that the States cannot pass a similar law to operate upon contracts subsequently entered into, it follows inevitably, either that they cannot pass such laws at all, contrary to the express declaration of the Court, as before quoted, or that such laws do not impair the obligation of contracts subsequently entered into; in fine, it is a self-evident proposition, that every contract that can be formed, must either precede, or follow, any law by which it may be affected.

I have, throughout the preceding part of this opinion, considered the municipal law of the country where the contract is made, as incorporated with the contract, whether it affects its validity, construction, or discharge. But I think it quite immaterial to stickle for this position, if it be conceded to me, what can scarcely be denied, that this municipal law constitutes the law of the contract so formed, and must govern it throughout. I hold the legal consequences to be the same, in which ever view the law, as it affects the contract, is considered.

I come now to a more particular examination and construction of the section under which this question arises; and I am free to acknowledge, that the collocation of the subjects for which it provides, has made an irresistible impression upon my mind, much stronger, I am persuaded, than I can find language to communicate to the minds of others.

It declares, that "no State shall coin money, emit bills of creditor make any thing but gold and silver coin a tender in payment of debts." These prohibitions, associated with the powers granted to Congress "to coin money, and to regulate the value thereof, and of foreign coin," most obviously constitute members of the same family, being upon the same subject, and governed by the same policy.

This policy was, to provide a fixed and uniform standard of value throughout the United States, by which the commercial and other dealings between the citizens thereof, or between them and foreigners, as well as the moneyed transactions of the government, should be regulated. For it might well be asked, why vest in Congress the power to establish a uniform standard

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of value by the means pointed out, if the States might use the same means, and thus defeat the uniformity of the standard, and consequently, the standard itself? And why establish a standard at all, for the government of the various contracts which might be entered into, if those contracts might afterwards be discharged by a different standard, or by that which is not money, under the authority of State tender laws? It is obvious, therefore, that these prohibitions, in the 10th section, are entirely homogeneous, and are essential to the establishment of a uniform standard of value, in the formation and discharge of contracts. It is for this reason, independent of the general phraseology which is employed, that the prohibition, in regard to State tender laws, will admit of no construction which would confine it to State laws which have a retrospective operation.

The next class of prohibitions contained in this section, consists of bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts.

Here, too, we observe, as I think, members of the same family brought together in the most intimate connexion with each other. The states are forbidden to pass any bill of attainder or *ex post facto* law, by which a man shall be punished criminally or penally, by loss of life, of his liberty, property, or reputation, for an act which, at the time of its commission, violated no existing law of the land. Why did the authors of the constitution turn their attention to this subject, which, at the first blush, would appear to be peculiarly fit to be left to the discretion of those who have the police and good government of the State under their management and control? The only answer to be given is, because laws of this character are oppressive, unjust, and tyrannical; and, as such, are condemned by the universal sentence of civilized man. The injustice and tyranny which characterizes *ex post facto* laws, consists altogether in their retrospective operations, which applies with equal force, althongh not exclusively, to bills of attainder.

But if it were deemed wise and proper to prohibit State legislation as to retrospective laws, which concern, almost exclusively, the citizens and inhabitants of the particular State in which this legislation takes place, how much more did it concern the private and political interests of the citizens of all the States, in their commercial and ordinary intercourse with each other, that the same prohibition should be extended civilly to the contracts which they might enter into?

If it were proper to prohibit a State legislature to pass a retrospective law, which should take from the pocket of one of

its own citizens a single dollar, as a punishment for an act which was innocent at the time it was committed; how much more proper was it to prohibit laws of the same character precisely, which might deprive the citizens of others States, and foreigners, as well as citizens of the same State, of thousands, to which, by their contracts, they were justly entitled, and which they might possibly have realized but for such State interference? How natural, then, was it, under the influence of these considerations, to interdict similar legislation in regard to contracts, by providing, that no State should pass laws impairing the obligation of past contracts? It is true, that the two first of these prohibitions apply to laws of a criminal, and the last to laws of a civil character; but if I am correct in my view of the spirit and motives of these prohibitions, they agree in the *principle* which suggested them. They are founded upon the same reason; and the application of it is at least as strong to the last, as it is to the two first prohibitions.

But these reasons are altogether inapplicable to laws of a prospective character. There is nothing unjust or tyrannical in punishing offences prohibited by law, and committed in violation of that law. Nor can it be unjust, or oppressive, to declare by law, that contracts subsequently entered into, may be discharged in a way different from that which the parties have provided, but which they know, or may know, are liable, under certain circumstances, to be discharged in a manner contrary to the provisions of their contract.

Thinking, as I have always done, that the power to pass bankrupt laws was intended by the authors of the constitution to be exclusive in Congress, or, at least, that they expected the power vested in that body would be exercised, so as effectually to prevent its exercise by the States, it is the more probable that, in reference to all other interferences of the State legislatures upon the subject of contracts, retrospective laws were alone in the contemplation of the Convention.

In the construction of this clause of the tenth section of the constitution, one of the counsel for the defendants supposed himself at liberty so to transpose the provisions contained in it, as to place the prohibition to pass laws impairing the obligation of contracts in juxtaposition with the other prohibition to pass laws making any thing but gold and silver coin a tender in payment of debts, inasmuch as the two provisions relate to the *subject of contracts*.

That the derangement of the words, and even sentences of a law, may sometimes be tolerated, in order to arrive at the appa-

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rent meaning of the legislature, to be gathered from other parts, or from the entire scope of the law, I shall not deny. But I should deem it a very hazardous rule to adopt, in the construction of an instrument so maturely considered as this constitution was by the enlightened statesmen who framed it, and so severely examined and criticised by its opponents in the numerous State conventions which finally adopted it. And if, by the construction of this sentence, arranged as it is, or as the learned counsel would have it to be, it could have been made out that the power to pass prospective laws, *affecting contracts*, was denied to the States, it is most wonderful that not one voice was raised against the provision, in any of those conventions, by the jealous advocates of State rights, nor even an amendment proposed, to explain the clause, and to exclude a construction which trenches so extensively upon the sphere of State legislation.

But, although the transposition which is contended for may be tolerated in cases where the obvious intention of the legislature can in no other way be fulfilled, it can never be admitted in those where consistent meaning can be given to the whole clause as its authors thought proper to arrange it, and where the only doubt is, whether the construction which the transposition countenances, or that which results from the reading which the legislature has thought proper to adopt, is most likely to fulfil the supposed intention of the legislature. Now, although it is true, that the prohibition to pass tender laws of a particular description, and laws impairing the obligation of contracts, relate, both of them, to contracts, yet, the principle which governs each of them, clearly to be inferred from the subjects with which they stand associated, is altogether different; that of the first forming part of a system for fixing a uniform standard of value, and, of the last, being founded on a denunciation of retrospective laws. It is, therefore, the safest course, in my humble opinion, to construe this clause of the section according to the arrangement which the Convention has thought proper to make of its different provisions. To insist upon a transposition, with a view to warrant one construction rather than the other, falls little short, in my opinion, of a begging of the whole question in controversy.

But why, it has been asked, forbid the States to pass laws making any thing but gold and silver coin a tender in payment of debts, contracted subsequent, as well as prior, to the law which authorizes it; and yet confine the prohibition to pass laws impairing the obligation of contracts to past contracts, or in

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other words, to future bankrupt laws, when the consequence resulting from each is the same, the latter being considered by the counsel as being, in truth, nothing less than tender laws in disguise.

An answer to this question has, in part, been anticipated by some of the preceding observations. The power to pass bankrupt laws having been vested in Congress, either as an exclusive power, or under the belief that it would certainly be exercised, it is highly probable that State legislation, upon that subject was not within the contemplation of the convention; or, if it were, it is quite unlikely that the exercise of the power by the State legislatures, would have been prohibited by the use of terms which, I have endeavoured to show, are inapplicable to laws intended to operate prospectively. For had the prohibition been to pass laws *impairing contracts*, instead of the obligation of contracts, I admit, that it would have borne the construction which is contended for, since it is clear that the agreement of the parties in the first case, would be impaired as much by a prior as it would be by a subsequent bankrupt law. It has, besides, been attempted to be shown, that the limited restriction upon State legislation, imposed by the former prohibition, might be submitted to by the States, whilst the extensive operation of the latter would have *hazarded*, to say the least of it, the adoption of the constitution by the State conventions.

But an answer, still more satisfactory to my mind, is this: Tender laws, of the description stated in this section, are always unjust; and, where there is an existing bankrupt law at the time the contract is made, they can seldom be useful to the honest debtor. They violate the agreement of the parties to it, without the semblance of an apology for the measure, since they operate, to discharge the debtor from his undertaking, upon terms variant from those by which he bound himself, to the injury of the creditor, and unsupported, in many cases, by the plea of necessity. They extend relief to the opulent debtor, who does not stand in need of it; as well as to the one who is, by misfortunes, often unavoidable, reduced to poverty, and disabled from complying with his engagements. In relation to subsequent contracts, they are unjust when extended to the former class of debtors, and useless to the second, since they may be relieved by conforming to the requisitions of the State bankrupt law, where there is one. Being discharged by this law from all his antecedent debts, and having his future acquisitions secured to him, an opportunity is afforded him to become once more a useful member of society.

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If this view of the subject be correct, it will be difficu prove, that a prospective bankrupt law resembles, in any o features, a law which should make any but gold and silver a tender in payment of debts.

I shall now conclude this opinion, by repeating the ackn ledgement which candour compelled me to make in its c mencement, that the question which I have been examinin involved in difficulty and doubt. But if I could rest my nion in favour of the constitutionality of the law on which question arises, on no other ground than this doubt so felt acknowledged, that alone would, in my estimation, be a sa factory vindication of it. It is but a decent respect due to wisdom, the integrity, and the patriotism of the legislative bo by which any law is passed, to presume in favour of its validi until its violation of the constitution is proved beyond all re sonable doubt. This has always been the language of t Court, when that subject has called for its decision; and I kno that it expresses the honest sentiments of each and every me ber of this bench. I am perfectly satisfied that it is entertain by those of them from whom it is the misfortune of the majo ty of the Court to differ on the present occasion, and that the feel no reasonable doubt of the correctness of the conclusion which their best judgment has conducted them.

My opinion is, that the judgment of the Court below ought be reversed, and judgment given for the plaintiff in error.

Mr. Justice JOHNSON. This suit was instituted in Louisiana in the Circuit Court of the United States, by Saunders, the de fendant here, against Ogden, upon certain bills of exchange Ogden, the defendant there pleads, in bar, to the action, a dis charge obtained, in due form of law, from the Courts of the State of New-York, which discharge purports to release him from all debts and demands existing against him on a specified day. This demand is one of that description, and the act under which the discharge was obtained, was the act of New York of 1801, a date long prior to that of the cause of action on which this suit was instituted. The discharge is set forth in the plea, and represents Ogden as "an insolvent debtor, being, on the day and year therein after mentioned, in prison, in the city and county New-York, on execution issued against him on some civil action," &c. It does not appear that any suit had ever been instituted against him by this party, or on this cause of action, prior to the present. The cause below was decided upon a special verdict, in which the jury find.

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1st. That the acceptance of the bills on which the action was instituted, was made by Ogden, in the city of New-York, on the days they severally bear date, the said defendant then residing in the city of New-York, and continuing to reside there until a day not specified.

2d. That under the laws of the State of New-York, in such case provided, and referred to in the discharge, (which laws are specially found, &c. meaning the State law of 1801, application was made for, and the defendant obtained, the discharge hereunto annexed.

3d. That, by the laws of New-York, actions on bills of exchange, and acceptances thereof, are limited to the term of six years; and,

4th. That at the time the said bills were drawn and accepted, the drawee and the drawer of the same, were residents and citizens of the State of Kentucky.

On this state of facts the Court below gave judgment against Ogden, the discharged debtor.

We are not in possession of the grounds of the decision below, and it has been argued here, as having been given upon the general nullity of the discharge, on the ground of its unconstitutionality. But, it is obvious, that it might also have proceeded upon the ground of its nullity, as to citizens of other States, who have never, by any act of their own, submitted themselves to the *lex fori* of the State that gives the discharge—considering the right given by the constitution to go into the Courts of the United States upon any contracts, whatever be their *lex loci*, as modifying and limiting the general power which States are acknowledged to possess over contracts formed under control of their peculiar laws.

This question, however, has not been argued, and must not now be considered as disposed of by this decision.

The abstract question of the general power of the States to pass laws for the relief of insolvent debtors, will be alone considered. And here, in order to ascertain with precision what we are to decide, it is first proper to consider what this Court has already decided on this subject. And this brings under review the two cases of *Sturges v. Crowninshield*, and *M'Millan* v. *M'Neill*, adjudged in the year 1819, and contained in the 4th vol. of the Reports. If the marginal note to the report, or the summary of the effect of the case of *M'Millan* v. *M'Neill*, presented a correct view of the report of that decision, it is obvious, that there would remain very little, if any thing, for this Court to decide. But by comparing the note of the Reporter

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with the facts of the case, it will be found that there is a generality of expression admitted into the former, which the case itself does not justify. The principle recognized and affirmed in *M'Millan* v. *M'Neill*, is one of universal law, and so obvious and incontestible that it need be only understood to be assented to. It is nothing more than this, "*that insolvent laws have no extra-territorial operation upon the contracts of other States; that the principle is applicable as well to the discharges given under the laws of the States, as of foreign countries; and that the anterior or posterior character of the law under which the discharge is given, with reference to the date of the contract, makes no discrimination in the application of that principle.*"

The report of the case of *Sturges* v. *Crowninshield* needs also some explanation. The Court was, in that case, greatly divided in their views of the doctrine, and the judgment partakes as much of a compromise, as of a legal adjudication. The minority thought it better to yield something than risk the whole. And, although their course of reasoning led them to the general maintenance of the State power over the subject, controlled and limited alone by the oath administered to all their public functionaries to maintain the constitution of the United States, yet, as denying the power to act upon anterior contracts, could do no harm, but, in fact, imposed a restriction conceived in the true spirit of the constitution, they were satisfied to acquiesce in it, provided the decision was so guarded as to secure the power over posterior contracts, as well from the positive terms of the adjudication, as from inference deducible from the reasoning of the Court.

The case of *Sturges* v. *Crowninshield*, then, must, in its authority, be limited to the terms of the certificate, and that certificate affirms to propositions.

1. That a State has authority to pass a bankrupt law, provided such law does not impair the obligation of contracts within the meaning of the constitution, and provided there be no act of Congress, in force to establish an uniform system of bankruptcy, conflicting with such law.

2. That a law of this description, acting upon prior contracts, is a law impairing the obligation of contracts within the meaning of the constitution.

Whatever inferences or whatever doctrines the opinion of the Court in that case may seem to support, the concluding words of that opinion were intended to control and to confine the authority of the adjudication to the limits of the certificate.

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I should, therefore, have supposed, that the question of exclusive power in Congress to pass a bankrupt law was not now open; but it has been often glanced at in argument, and I have no objection to express my individual opinion upon it. Not having recorded my views on this point in this case of *Crowninshield*, I avail myself of this occasion to do so.

So far, then, am I from admitting that the constitution affords any ground for this doctrine, that I never had a doubt, that the leading object of the constitution was to bring in aid of the States a power over this subject, which their individual powers never could attain to; so far from limiting, modifying, and attenuating legislative power in its known and ordinary exercise in favour of unfortunate debtors, that its sole object was to extend and perfect it, as far as the combined powers of the States, represented by the general government, could extend it. Without that provision, no power would have existed that could extend a discharge beyond the limits of the State in which it was given, but with that provision it might be made co-extensive with the United States. This was conducing to one of the great ends of the constitution, one which it never loses sight of in any of its provisions, that of making an American citizen as free in one State as he was in another. And when we are told that this instrument is to be construed with a view to its federative objects, I reply, that this view alone of the subject is in accordance with its federative character.

Another object in perfect accordance with this, may have been that of exercising a salutary control over the power of the States, whenever that power should be exercised without due regard to the fair exercise of distributive justice. The general tendency of the legislation of the States at that time to favour the debtor, was a consideration which entered deeply into many of the provisions of the constitution. And as the power of the States over the law of their respective forums remained untouched by any other provisions of the constitution; when vesting in Congress the power to pass a bankrupt law, it was worthy of the wisdom of the Convention to add to it the power to make that system uniform and universal. Yet, on this subject, the use of the term *uniform* instead of *general*, may well raise a doubt whether it meant more than that such a law should not be *partial*, but have an equal and *uniform* application in every part of the Union. This is in perfect accordance with the spirit in which various other provisions of the constitution are conceived.

For these two objects there appears to have been much reason for vesting this power in Congress: but for extending to the

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grant the effect of *exclusiveness* over the power of the States, appears to me not only without reason, but to be repelled by weighty considerations.

1. There is nothing which, on the face of the constitution, bears the semblance of direct prohibition on the States to exercise this power; and it would seem strange that, if such a prohibition had been in the contemplation of the Convention, when appropriating an entire section to the enumeration of prohibitions on the States, they had forgotten this, if they had intended to enact it.

The antithetical language adopted in that section, as to every other subject to which the power of Congress had been previously extended, affords a strong reason to conclude, that some direct and express allusion to the power to pass a bankrupt law would have been here inserted also, if they had not intended that this power should be concurrently, or, at least, subordinately exercised by the States. It cannot be correct reasoning, to rely upon this fact as a ground to infer that the prohibition must be found in some provision not having that antithetical character, since this supposes an intention to insert the prohibition, which intention can only be assumed. Its omission is a just reason for forming no other conclusion than that it was purposely omitted. But,

2 It is insisted, that though not express, the prohibition is to be inferred from the grant to Congress to establish uniform laws on the subject of bankruptcies throughout the United States; and that this grant, standing in connexion with that to establish an uniform rule of naturalization, which is, in its nature, exclusive, must receive a similar construction.

There are many answers to be given to this argument; and the first is, that a mere grant of a State power does not, in itself, necessarily imply an abandonment or relinquishment of the power granted, or we should be involved in the absurdity of denying to the States the power of taxation, and sundry other powers ceded to the general government. But much less can such a consequence follow from vesting in the general government a *power which no State possessed*, and which, all of them combined, could not exercise to meet the end proposed in the constitution. For, if every State in the Union were to pass a bankrupt law in the same unvarying words, although this would, undoubtedly, be an *uniform* system of bankruptcy in its literal sense, it would be very far from answering the grant to Congress. There would still need some act of Congress, or some treaty under sanction of an act of Congress, to give discharges in one State a full

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operation in the other. Thus then, the inference which we are called upon to make, will be found not to rest upon any actual cession of State power, but upon the creation of a new power which no state ever pretended to possess; a power which, so far from necessarily diminishing, or impairing the State power over the subject, might find its full exercise in simply recognizing as valid, in every State, all discharges which shall be honestly obtained under the existing laws of any State.

Again; the inference proposed to be deduced from this grant to Congress, will be found much broader than the principle in which the deduction is claimed. For, in this, as in many other instances in the constitution, the grant implies only *the right to assume and exercise a power over the subject.* Why, then, should the State powers cease before Congress shall have acted upon the subject? or why should that be converted into a present and absolute relinquishment of power, which is, in its nature, merely potential, and dependant on the discretion of Congress whether and when, to enter on the exercise of a power that may supersede it?

Let any one turn his eye back to the time when this grant was made, and say if the situation of the people admitted of an abandonment of a power so familiar to the jurisprudence of every so universally sustained in its reasonable exercise, by the opinion and practice of mankind, and so vitally important to a people overwhelmed in debt, and urged to enterprise by the activity of mind that is generated by revolutions and free governments.

I will without confidence affirm, that the constitution had never been adopted, had it then been imagined that this question would ever have been made, or that the exercise of this power in the States should ever have depended upon the views of the tribunals to which that constitution was about to give existence. The argument proposed to be drawn from a comparison of this power with that of Congress over naturalization, is not a fair one, for the cases are not parallel; and if they were, it is by no means settled that the States would have been precluded from this power if Congress had not assumed it. But, admitting, *argumenti gratia*, that they would, still there are considerations bearing upon the one power, which have no application to the other. Our foreign intercourse being exclusively committed to the general government, it is peculiarly their province to determine who are entitled to the privileges of American citizens, and the protection of the American government. And the citizens of any one State being entitled by the constitution to enjoy the rights of citizenship in every other State, that fact creates an interest in this particular in each other's acts, which does not

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exist with regard to their bankrupt laws; since State acts of naturalization would thus be *extra-territorial* in their operation, have an influence on the most vital interests of other States.

On these grounds, State laws of naturalization may be brou under one of the four heads or classes of powers precluded the States, to wit: that of incompatibility; and on this grou alone, if any, could the States be debarred from exercising t power, had Congress not proceeded to assume it. There therefore, nothing in that argument.

The argument deduced from the commercial character bankrupt laws is still more unfortunate. It is but necessary follow it out, and the inference, if any, deducible from it, will l found to be direct and conclusive in favour of the State righ over this subject. For if, in consideration of the power veste in Congress over foreign commerce, and the commerce betwee the States, it was proper to vest a power over bankruptcie that should pervade the States; it would seem, that by leavin the regulation of internal commerce in the power of the States it became equally proper to leave the exercise of this powe within their own limits unimpaired.

With regard to the universal understanding of the American people on this subject, there cannot be two opinions. If ever contemporaneous exposition, and the clear understanding of the contracting parties, or of the legislating power, (it is no matter in which light it be considered,) could be resorted to as the means of expounding an instrument, the continuing and unimpaired existence of this power in the States ought never to have been controverted. Nor was it controverted until the repeal of the bankrupt act of 1800, or until a state of things arose in which the means of compelling a resort to the exercise of this power by the United States became a subject of much interest. Previously to that period, the States remained in the peaceable exercise of this power, under circumstances entitled to great consideration. In every State in the Union was the adoption of the constitution resisted by men of the keenest and most comprehensive minds; and if an argument, such as this, so calculated to fasten on the minds of a people, jealous of State rights, and deeply involved in debt, could have been imagined, it never would have escaped them. Yet no where does it appear to have been thought of; and, after adopting the constitution, in every part of the Union, we find the very framers of it every where among the leading men in public life, and legislating or adjudicating under the most solemn oath to maintain the constitution of the United States, yet no where imagining that, in the exercise of

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this power, they violated their oaths, or transcended their rights. Every where too, the principle was practically acquiesced in, *that taking away the power to pass a law on a particular subject was equivalent to a repeal of existing laws on that subject.* Yet in no instance was it contended that the bankrupt laws of the States were repealed, while those on navigation, commerce, the admiralty jurisdiction, and various others, were at once abandoned without the formality of a repeal. With regard to their bankrupt or insolvent laws, they went on carrying them into effect and abrogating, and re-enacting them, without a doubt of their full and unimpaired power over the subject. Finally, when the bankrupt law of 1800 was enacted, the only power that seemed interested in denying the right to the States, formally pronounced a full and absolute recognition of that right. It is impossible for language to be more full and explicit on the subject, than is the sixth section of this act of Congress. It acknowledges both the validity of existing laws, and the right of passing future laws. The practical construction given by that act, to the constitution is precisely this, *that it amounts only to a right to assume the power to legislate on the subject, and therefore, abrogates or suspends the existing laws, only so far as they may clash with the provisions of the act of Congress.* This construction was universally acquiesced in, for it was that on which there had previously prevailed but one opinion from the date of the constitution.

Much alarm has been expressed respecting the inharmonious operation of so many systems, all operating at the same time. But I must say that I cannot discover any real ground for these apprehensions. Nothing but a future operation is here contended for, and nothing is easier than to avoid those rocks and quicksands which are visible to all. Most of the dangers are imaginary, for the interests of each community, its respect for the opinion of mankind, and a remnant of moral feeling which will not cease to operate in the worst of times, will always present important barriers against the gross violation of principle. How is the general government itself made up, but of the same materials which separately make up the governments of the States?

It is a very important fact, and calculated to dissipate the fears of those who seriously apprehended danger from this quarter, that the powers assumed and exercised by the States, over this subject did not compose any part of the grounds of complaint by Great Britain, when negociating with our government on the subject of violations of the treaty of peace. Nor

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is it immaterial as an historical fact, to show the evil aga which the constitution really intended to provide a remedy. deed, it is a solecism to suppose, that the permanent laws of government, particularly those which relate to the administ tion of justice between individuals, can be radically unequal even unwise. It is scarcely ever so in despotic goverments; mu less in those in which the good of the whole is the predos nating principle. The danger to be apprehended, is from te porary provisions and desultory legislation; and this seldom h a view to future contracts.

At all events, whatever be the degree of evil to be produc by such laws, the limits of its action are necessarily confined the territory of those who inflict it. The ultimate object in d nying to the States this power, would seem to be, to give th evil a wider range, if it be one, by extending the benefit of di charges over the whole of the Union. But it is impossible t suppose, that the framers of the constitution could have regard ed the exercise of this power as an evil in the abstract, else the would hardly have engrafted it upon that instrument which wa to become the great safeguard of public justice and public mo rals.

And had they been so jealous of the exercise of this powe in the States, it is not credible that they would have left unim paired those unquestionable powers over the administration of justice which the States do exercise, and which in their immo ral exercise, might leave to the creditor the mere shadow of justice. The debtor's person, no one doubts, may be exempted from execution. But there is high precedent for exempting his lands; and public feeling would fully sustain an exemption of his slaves. What is to prevent the extension of exemption, until nothing is left but the mere mockery of a judgment, without the means of enforcing its satisfaction?

But it is not only in their execution laws, that the creditor has been left to the justice and honour of the States for his se curity. Every judiciary in the Union owes its existence to some legislative act; what is to prevent a repeal of that act? and then, what becomes of his remedy, if he has no access to the Courts of the Union? Or what is to prevent the extension of the right to imparl? of the times to plead? of the interval between the sittings of the State Courts? Where is the remedy against all this? and why were not these powers taken also from the States, if they could not be trusted with the subordi nate and incidental power here denied them? The truth is, the Convention saw all this, and saw the impossibility of providing

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an adequate remedy for such mischiefs, if it was not to be found ultimately in the wisdom and virtue of the State rulers, under the salutary control of that republican form of government which it guarantees to every State. For the *foreigner* and the *citizens of other States*, it provides the safeguard of a tribunal which cannot be controlled by State laws in the application of the remedy; and for the protection of all, was interposed, that oath which it requires to be administered to all the public functionaries, as well of the States, as the United States. It may be called the ruling principle of the constitution, to interfere as little as possible between the citizen and his own State government; and hence, with a few safeguards of a very general nature, the executive, legislative and judicial functions of the States are left as they were, as to their own citizens, and as to all internal concerns. It is not pretended that this discharge could operate upon the rights of the citizen of any other State, unless his contract was entered into in the State that gave it, or unless he had voluntarily submitted himself to the *lex fori* of the State before the discharge, in both which instances he is subjected to its effects by his own voluntary act.

For these considerations, I pronounce the exclusive power of Congress over the relief of insolvents untenable, and the dangers apprehended from the contrary doctrine unreal.

We will next inquire whether the States are precluded from the exercise of this power by that clause in the constitution, which declares that no State shall "pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

This law of the State of New-York is supposed to have violated the obligation of a contract, by releasing Ogden from a debt which he had not satisfied; and the decision turns upon the question, first, in what consists the obligation of a contract? and, secondly, whether the act of New-York will amount to a violation of that obligation, in the sense of the constitution.

The first of these questions has been so often examined and considered in this and other Courts of the United States, and so little progress has yet been made in fixing the precise meaning of the words "obligation of a contract," that I should turn in despair from the inquiry, were I not convinced that the difficulties, the question presents are mostly factitious, and the result of refinement and technicality; or of attempts at definition made in terms defective both in precision and comprehensiveness. Right or wrong, I come to my conclusion on their meaning, as applied to executory contracts, the subject now before us, by a simple and short-handed exposition.

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Right and obligation are considered by all ethical writers as correlative terms: Whatever I by my contract give another a right to require of me, I by that lay myself under an obligation to yield or bestow. The obligation of every contract will then consist of that right or power over my will or actions, which I, by my contract, confer on another. And that right and power will be found to be measured neither by moral law alone, nor universal law alone, nor by the laws of society alone, but by a combination of the three,—an operation in which the moral law is explained and applied by the law of nature, and both modified and adapted to the exigencies of society by positive law. The constitution was framed for society, and an advanced state of society, in which I will undertake to say that *all* the contracts of men receive a relative, and not a positive interpretation: for the rights of all must be held and enjoyed in subserviency to the good of the whole. The State construes them, the State applies them, the State controls them, and the State decides how far the social exercise of the rights they give us over each other can be justly asserted. I say the social exercise of these rights, because in a state of nature, they are asserted over a fellow creature, but in a state of society, over a fellow citizen. Yet, it is worthy of observation, how closely the analogy is preserved between the assertion of these rights in a state of nature and a state of society, in their application to the class of contracts under consideration.

Two men, A. and B., having no previous connexion with each other, (we may suppose them even of hostile nations,) are thrown upon a desert island. The first, having had the good fortune to procure food, bestows a part of it upon the other, and he contracts to return an equivalent in kind. It is obvious here, that B. subjects himself to something more than the moral obligation of his contract, and that the law of nature, and the sense of mankind, would justify A. in resorting to any means in his power to compel a compliance with this contract. But if it should appear that B., by sickness, by accident, or circumstances beyond human control, however superinduced, could not possibly comply with his contract, the decision would be otherwise, and the exercise of compulsory power over B. would be followed with the indignation of mankind. He has carried the power conferred on him over the will or actions of another beyond their legitimate extent, and done injustice in his turn. "*Summum jus est summa injuria.*"

The progress of parties, from the initiation to the consummation of their rights, is exactly parallel to this in a state of

society. With this difference, that in the concoction of their contracts, they are controlled by the laws of the society of which they are members; and for the construction and enforcement of their contracts, they rest upon the functionaries of its government. They can enter into no contract which the laws of that community forbid, and the validity and effect of their contracts is what the existing laws give to them. The remedy is no longer retained in their own hands, but surrendered to the community, to a power competent to do justice, and bound to discharge towards them the acknowledged duties of government to society, according to received principles of equal justice. The public duty, in this respect, is the substitute for that right which they possessed in a state of nature, to enforce the fulfilment of contracts; and if, even in a state of nature, limits were prescribed by the reason and nature of things, to the exercise of individual power in enacting the fulfilment of contracts, much more will they be in a state of society. For it is among the duties of society to enforce the rights of humanity; and both the debtor and the society have their interests in the administration of justice, and in the general good; interests which must not be swallowed up and lost sight of while yielding attention to the claim of the creditor. The debtor may plead the visitations of Providence, and the society has an interest in preserving every member of the community from despondency—in relieving him from a hopeless state of prostration, in which he would be useless to himself, his family, and the community. When that state of things has arrived in which the community has fairly and fully discharged its duties to the creditor, and in which pursuing the debtor any longer would destroy the one, without benefitting the other, must always be a question to be determined by the common guardian of the rights of both; and in this originates the power exercised by governments in favour of insolvents. It grows out of the administration of justice, and is a necessary appendage to it.

There was a time when a different idea prevailed, and then it was supposed that the rights of the creditor required the sale of the debtor, and his family. A similar notion now prevails on the coast of Africa, and is often exercised there by brute force. It is worthy only of the country in which it now exists, and of that state of society in which it once originated and prevailed.

"*Lex non cogit ad impossibilia*," is a maxim applied by law to the contracts of parties in a hundred ways. And where is the objection, in a moral or political view, to applying it to the

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exercise of the power to relieve insolvents? It is in analogy with this maxim, that the power to relieve them is exercised; and if it never was imagined, that, in other cases, this maxim violated the obligation of contracts, I see no reason why a fair, ordinary, and reasonable exercise of it in this instance should be subjected to that imputation.

If it be objected to these views of the subject, that they are as applicable to contracts prior to the law, as to those posterior to it, and, therefore, inconsistent with the decision in the case of *Sturges* v. *Crowninshield*, my reply, is, that I think this no objection to its correctness. I entertained this opinion then, and have seen no reason to doubt it since. But if applicable to the case of prior debts, *multo fortiori*, will it be so to those contracted subsequent to such law; the posterior date of the contract removes all doubt of its being in the fair and unexceptionable administration of justice that the discharge is awarded.

I must not be understood here, as reasoning upon the assumption that the remedy is grafted into the contract. I hold the doctrine untenable, and infinitely more restrictive on State power than the doctrine contended for by the opposite party. Since if the remedy enters into the contract, then the States lose all power to alter their laws for the administration of justice. Yet, I freely admit, that the remedy enters into the views of the parties when contracting; that the constitution pledges the States to every creditor for the full, and fair, and candid exercise of State power to the ends of justice, according to its ordinary administration, uninfluenced by views to lighten, or lessen, or defer the obligation to which each contract fairly and legally subjects the individual who enters into it. Whenever an individual enters into a contract, I think his assent is to be inferred, to abide by those rules in the administration of justice which belong to the jurisprudence of the country of the contract. And when compelled to pursue his debtor in other States, he is equally bound to acquiesce in the law of the forum to which he subjects himself. The law of the contract remains the same every where, and it will be the same in every tribunal; but the remedy necessarily varies, and with it the effect of the constitutional pledge, which can only have relation to the laws of distributive justice known to the policy of each State severally. It is very true, that inconveniences may occasionally grow out of irregularities in the administration of justice by the States. But the citizen of the same State is referred to his influence over his own institutions for his security, and the citizens of the other States have the institutions and powers of the

general government to resort to. And this is all the security the constitution ever intended to hold out against the undue exercise of the power of the States over their own contracts, and their own jurisprudence. 1827. Ogden v. Saunders.

But, since a knowledge of the laws, policy, and jurisprudence of a State, is necessarily imputed to every one entering into contracts within its jurisdiction, of what surprise can he complain, or what violation of public faith, who still enters into contracts under that knowledge? It is no reply to urge, that, at the same time knowing of the constitution, he had a right to suppose the discharge void and inoperative, since this would be but speculating on a legal opinion, in which, if he proves mistaken, he has still nothing to complain of but his own temerity, and concerning which, all that come after this decision, at least, cannot complain of being misled by their ignorance or misapprehensions. Their knowledge of the existing laws of the State will henceforward be unqualified, and was so, in the view of the law, before this decision was made.

It is now about twelve or fourteen years since I was called upon, on my circuit, in the case of *Gell, Clanonge & Co.* v. *L. Jacobs*, to review all this doctrine. The cause was ably argued by gentlemen whose talents are well known in this capitol, and the opinions which I then formed, I have seen no reason since to distrust.

It appears to me, that a great part of the difficulties of the cause, arise from not giving sufficient weight to the general intent of this clause in the constitution, and subjecting it to a severe literal construction, which would be better adapted to special pleadings.

By classing bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts together, the general intent becomes very apparent; it is a general provision against arbitrary and tyrannical legislation over existing rights, whether of person or property. It is true, that some confusion has arisen from an opinion, which seems early, and without due examination, to have found its way into this Court; that the phrase "*ex post facto*," was confined to laws affecting criminal acts alone. The fact, upon examination, will be found otherwise; for neither in its signification or uses is it thus restricted. It applies to civil as well as to criminal acts, (1 *Shep. Touch.* 68. 70. 73.) and with this enlarged signification attached to that phrase, the purport of the clause would be, "*that the States shall pass no law, attaching to the acts of individuals other effects or consequences than those attached to them by the laws existing at their*

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date; and all contracts thus construed, shall be enforced accor to their just and reasonable purport."

But to assign to contracts, universally, a literal purport, to exact for them a rigid literal fulfilment, could not have t the intent of the constitution. It is repelled by a hundred amples. Societies exercise a positive control as well over inception, construction, and fulfilment of contracts, as over form and measure of the remedy to enforce them.

As instances of the first, take the contract imputed to drawer of a bill, or endorser of a note, with its modificatio the deviations of the law from the literal contract of the part to a penal bond, a mortgage, a policy of insurance, bottom bond, and various others that might be enumerated. And i instances of discretion exercised in applying the remedy, ta the time for which executors are exempted from suit; the e emption of members of legislatures; of judges; of persons a tending Courts, or going to elections; the preferences given the marshalling of assets; sales on credit for a present deb shutting of Courts altogether against gaming debts and usurio contracts, and above all, *acts of limitation.* I hold it impos ble to maintain the constitutionality of an act of limitation, i the modification of the remedy against debtors, implied in th discharge of insolvents, is unconstitutional. I have seen no dis tinction between the cases that can bear examination.

It is in vain to say that acts of limitation appertain to the re medy only: both descriptions of laws appertain to the remedy, and exactly in the same way; they put a period to the remedy, and upon the same terms, by what has been called, a *tender of paper money in the form of a plea*, and to the advantage of the insolvent laws, since if the debtor can pay, he has been made to pay. But the door of justice is shut in the face of the creditor in the other instance, without an inquiry on the subject of the debtor's capacity to pay. And it is equally vain to say, that the act of limitation raises a presumption of payment, since it cannot be taken advantage of on the general issue, without provision by statute; and the only legal form of a plea implies an acknowledgement that the debt has not been paid.

Yet so universal is the assent of mankind in favour of limitation acts, that it is the opinion of profound politicians, that no nation could subsist without one.

The right, then, of the creditor, to the aid of the public arm for the recovery of contracts, is not absolute and unlimited, but may be modified by the necessities or policy of societies. And this, together with the contract itself, must be taken by the indi-

vidual, subject to such restrictions and conditions as are imposed by the laws of the country. The right to pass bankrupt laws is asserted by every civilized nation in the world. And in no writer, I will venture to say, has it ever been suggested, that the power of annulling such contracts, universally exercised under their bankrupt or insolvent systems, involves a violation of the obligation of contracts. In international law, the subject is perfectly understood, and the right generally acquiesced in; and yet the denial of justice is, by the same code, an acknowledged cause of war.

But, it is contended, that if the obligation of a contract has relation at all to the laws which give or modify the remedy, then the obligation of a contract is ambulatory, and uncertain, and will mean a different thing in every State in which it may be necessary to enforce the contract.

There is no question that this effect follows; and yet, after this concession, it will still remain to be shown how any violation of the obligation of the contract can arise from that cause. It is a casualty well known to the creditor when he enters into the contract; and if obliged to prosecute his rights in another State, what more can he claim of that State, than that its Courts shall be opened to him on the same terms on which they are open to other individuals? It is only by voluntarily subjecting himself to the *lex fori* of a State, that he can be brought within the provision of its statutes in favour of debtors, since, in no other instance, does any State pretend to a right to discharge the contracts entered into in another State. He who enters into a pecuniary contract, knowing that he may have to pursue his debtor, if he flees from justice, casts himself, in fact, upon the justice of nations.

It has also been urged, with an earnestness that could only proceed from deep conviction, that insolvent laws were tender laws of the worst description, and that it is impossible to maintain the constitutionality of insolvent laws that have a future operation, without asserting the right of the States to pass tender laws, provided such laws are confined to a future operation.

Yet to all this there appears to be a simple and conclusive answer. The prohibition in the constitution to make any thing but gold or silver coin a tender in payment of debts is express and universal. The framers of the constitution regarded it as an evil to be repelled without modification; they have, therefore, left nothing to be inferred or deduced from construction on this subject. But the contrary is the fact with regard to insol-

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vent laws; it contains no express prohibition to pass such laws, and we are called upon, here to deduce such a prohibition from a clause, which is any thing but explicit, and which already has been judicially declared to embrace a great variety of other subjects. The inquiry, then, is open and indispensable in relation to insolvent laws, prospective or retrospective, whether they do, in the sense of the constitution, violate the obligation of contracts? There would be much in the argument, if there was no express prohibition against passing tender laws; but with such express prohibition, the cases have no analogy. And, independent of the different provisions in the constitution, there is a distinction existing between tender laws and insolvent laws in their object and policy, which sufficiently points out the principle upon which the constitution acts upon them as several and distinct; a tender law supposes a capacity in the debtor to pay and satisfy the debt in some way, but the discharge of an insolvent is founded in his incapacity ever to pay, which incapacity is judicially determined according to the laws of the State that passes it. The one imports a positive violation of the contract, since all contracts to pay, not expressed otherwise, have relation to payment in the current coin of the country; the other imports an impossibility that the creditor ever can fulfil the contract.

If it be urged, that to assume this impossibility is itself an arbitrary act, that parties have in view something more than present possessions, that they look to future acquisitions, that industry, talents and integrity are as confidently trusted as property itself; and, to release them from this liability, impairs the obligation of contracts; plausible as the argument may seem, I think the answer is obvious and incontrovertible.

Why may not the community set bonds to the will of the contracting parties in this as in every other instance? That will is controlled in the instances of gaming debts, usurious contracts, marriage, brokage bonds, and various others; and why may not the community also declare that, "look to what you will, no contract formed within the territory which we govern shall be valid as against future acquisitions;" "we have an interest in the happiness, and services, and families of this community, which shall not be superseded by individual views?" Who can doubt the power of the State to prohibit her citizens from running in debt altogether? A measure a thousand times wiser than that impulse to speculation and ruin, which has hitherto been communicated to individuals by our public policy. And if to be

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prohibited altogether, where is the limit which may not be set both to the acts and the views of the contracting parties?

When considering the first question in this cause, I took occasion to remark on the evidence of contemporaneous exposition deducible from well known facts. Every candid mind will admit that this is a very different thing from contending that the frequent repetition of wrong will create a right. It proceeds upon the presumption, that the cotemporaries of the constitution have claims to our deference on the question of right, because they had the best opportunities of informing themselves of the understanding of the framers of the constitution, and of the sense put upon it by the people when it was adopted by them; and in this point of view it is obvious that the consideration bears as strongly upon the second point in the cause as on the first. For, had there been any possible ground to think otherwise, who could suppose that such men, and so many of them, acting under the most solemn oath, and generally acting rather under a feeling of jealousy of the power of the general government than otherwise, would universally have acted upon the conviction, that the power to relieve insolvents by a discharge from the debt had not been taken from the States by the article prohibiting the violation of contracts? The whole history of the times, up to a time subsequent to the repeal of the bankrupt law, indicates a settled knowledge of the contrary.

If it be objected to the views which I have taken of this subject, that they imply a departure from the direct and literal meaning of terms, in order to substitute an artificial or complicated exposition; my reply is, that the error is on the other side; *qui hæret in litera, hæret in cortice.* All the notions of society, particularly in their jurisprudence, are more or less artificial; our constitution no where speaks the language of men in a state of nature; let any one attempt a literal exposition of the phrase which immediately precedes the one under consideration, I mean "*ex post facto*," and he will soon acknowledge a failure. Or let him reflect on the mysteries that hang around the little slip of paper which lawyers know by the title of a bail-piece. The truth is, that even compared with the principles of natural law, scarcely any contract imposes an obligation conformable to the literal meaning of terms. He who enters into a contract to follow the plough for the year, is not held to its literal performance, since many casualties may intervene which would release him from the obligation without actual performance. There is a very striking illustration of this principle to be found in many instances in the books; I mean those cases in

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which parties are released from their contracts by a declaration of war, or where laws are passed rendering that unlawful, even incidentally, which was lawful at the time of the contract. Now, in both these instances, it is the government that puts an end to the contract, and yet no one ever imagined that it thereby violates the obligation of a contract.

It is, therefore, far from being true, as a general proposition, "that a government necessarily violates the obligation of a contract, which it puts an end to without performance." It is the motive, the policy, the object, that must characterize the legislative act, to affect it with the imputation of violating the obligation of contracts.

In the effort to get rid of the universal vote of mankind in favour of limitation acts, and laws against gaming, usury, marriage, brokage, buying and selling of offices, and many of the same description, we have heard it argued, that, as to limitation acts, the creditor has nothing to complain of because time is allowed him, of which, if he does not avail himself, it is his own neglect; and as to all others, there is no contract violated, because there was none ever incurred. But it is obvious that this mode of answering the argument involves a surrender to us of our whole ground. It admits the right of the government to limit and define the power of contracting, and the extent of the creditor's remedy against his debtor; to regard other rights besides his, and to modify his rights so as to let them override entirely the general interests of society, the interests of the community itself in the talent and services of the debtor, the regard due to his happiness, and to the claims of his family upon him and upon the government.

No one questions the duty of the government to protect and enforce the just rights of every individual over all within its control. What we contend for is no more than this, that it is equally the duty and right of governments to impose limits to the avarice and tyranny of individuals, so as not to suffer oppression to be exercised under the semblance of right and justice. It is true, that in the exercise of this power, governments themselves may sometimes be the authors of oppression and injustice; but, wherever the constitution could impose limits to such power, it has done so; and if it has not been able to impose effectual and universal restraints, it arises only from the extreme difficulty of regulating the movements of sovereign power; and the absolute necessity, after every effort that can be made to govern effectually, that will, still exist to leave some space for the exercise of discretion, and the influence of justice and wisdom.

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Mr. Justice THOMPSON. This action is founded on several bills of exchange, bearing date in September, 1806, drawn by J. Jordan, upon Ogden, the plaintiff in error, in favour of Saunders, the desendant in error. The drawer and payee, at the date of the bills, were citizens of, and resident in, Kentucky. Ogden was a citizen of, and resident in, New-York, where the bills were presented, and accepted by him, but were not paid when they came to maturity, and are still unpaid. Ogden sets up, in bar of this action, his discharge under the insolvent law of the State of New-York, passed in April, 1801, as one of the revised laws of that State. His discharge was duly obtained on the 19th of April, 1808, he having assigned all his property for the benefit of his creditors; and having, in all respects, complied with the laws of New-York for giving relief in cases of insolvency. These proceedings, according to those laws, discharged the insolvent from all debts due at the time of the assignment, or contracted for before that time, though payable afterwards, except in some specified cases, which do not affect the present question. From this brief statement it appears, that Ogden, being sued upon his acceptances of the bills in question, *the contract was made, and to be executed within the State of New-York*, and was made *subsequent* to the passage of the law under which he was discharged. Under these circumstances, the general question presented for decision is, whether this discharge can be set up in bar of the present suit. It is not pretended, but that if the law under which the discharge was obtained, is valid, and the discharge is to have its effect according to the provisions of that law, it is an effectual bar to any recovery against Ogden. But, it is alleged, that this law is void under the prohibition in the constitution of the United States, (art. 1. sec. 10.) which declares, that "no State shall pass any law impairing the obligation of contracts." So that the inquiry here is, whether the law of New-York, under which the discharge was obtained, is repugnant to this clause in the constitution, and, upon the most mature consideration, I have arrived at the conclusion, that the law is not void, and that the discharge set up by the plaintiff in error is an effectual protection against any liability upon the bills in question. In considering this question, I have assumed, that the point now presented is altogether undecided, and entirely open for discussion. Although several cases have been before the Court which may have a bearing upon the question, yet, upon the argument, the particular point now raised has been treated by the counsel as still open for decision,

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and so considered by the Court, by permitting its discuss
Although the law under which Ogden was discharged appe
by the record, to have been passed in the year 1801, yet, i
proper to notice, that this was a mere revision and re-enactm
of a law which was in force as early, at least, as from the y
1788, and which has continued in force from that time to
present, (except from the third of April, 1811, until the 14th
February, 1812,) in all its material provisions, which have a
bearing upon the present question. To declare a law null a
void after such a lapse of time, and thereby prostrate a syst
which has been in operation for nearly forty years, ought to
called for by some urgent necessity, and founded upon reaso
and principles scarcely admitting of doubt. In our complex sy
tem of government, we must expect that questions involving th
jurisdictional limits between the general and State government
will frequently arise; and they are always questions of great d
licacy, and can never be met without feeling deeply and ser
sibly impressed with the sentiment, that this is the point upo
which the harmony of our system is most exposed to interrup
tion. Whenever such a question is presented for decision,
cannot better express my views of the leading principles whic
ought to govern this Court, than in the language of the Cour
itself in the case of *Fletcher* v. *Peck* (6. *Cranch*, 128.) "The
question (says that Court) whether a law be void for its repug-
nancy to the constitution, is, at all times, a question of much de-
licacy, which ought seldom or ever to be decided in the affirma-
tive in a doubtful case. The Court, when impelled by duty to
render such a judgment, would be unworthy of its station, could
it be unmindful of the solemn obligation which that station im-
poses. But, it is not on slight implication, and vague conjecture,
that the legislature is to be pronounced to have transcended its
powers, and its acts to be considered void. The opposition be-
tween the constitution and the law should be such, that the
judge feels a clear and strong conviction of their incompatibility
with each other." If such be the rule by which the examina-
tion of this case is to be governed and tried, (and that it is no one
can doubt,) I am certainly not prepared to say, that it is not,
at least, a doubtful case, or that I feel a clear conviction that the
law in question is incompatible with the constitution of the
United States.

In the discussion at the bar, this has rightly been considered
a question relating to the division of power between the general
and State governments. And in the consideration of all such
questions, it cannot be too often repeated, (although universally

admitted,) or too deeply impressed on the mind, that all the powers of the general government are derived solely from the constitution; and that whatever power is not conferred by that charter, is reserved to the States respectively, or to the people. The State of New-York, when the law in question was passed, (for I consider this a mere continuation of the Insolvent Act of 1788,) was in the due and rightful exercise of its powers as an independent government; and unless this power has been surrendered by the constitution of the United States, it still remains in the State. And in this view, whether the law in question be called a bankrupt or an insolvent law, is wholly immaterial; it was such a law that a sovereign State had a right to pass; and the simple inquiry is, whether that right has been surrendered. No difficulty arises here out of any inquiry about express or implied powers granted by the constitution. If the States have no authority to pass laws like this, it must be in consequence of the express provision, "that no State shall pass any law impairing the obligation of contracts."

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It is admitted, and has so been decided by this Court, that a State law, discharging insolvent debtors from their contracts, entered into *antecedent* to the passing of the law, falls within this clause in the constitution, and is void. In the case now before the Court, the contract was made *subsequent* to the passage of the law; and this, it is believed, forms a solid ground of distinction, whether tested by the letter, or the spirit and policy of the prohibition. It was not denied on the argument, and, I presume, cannot be, but that a law may be void in part and good in part; or, in other words, that it may be void, so far as it has a retrospective application to past contracts, and valid, as applied prospectively to future contracts. The distinction was taken by the Court in the third Circuit, in the case of *Golden* v. *Prince*, (5 *Hall's L. J.* 502.) and which, I believe, was the first case that brought into discussion the validity of a State law analogous to the one now under consideration. It was there held, that the law was unconstitutional in relation to that particular case, because it impaired the obligation of the contract, by discharging the debtor from the payment of his debts, due or contracted for *before* the passage of the law. But it was admitted, that a law, prospective in its operation, under which a contract afterwards made might be avoided *in a way different from that provided by the parties*, would be clearly constitutional. And how is this distinction to be sustained, except on the ground that contracts are deemed to be made in reference to the existing law, and to be governed, regulated, and controlled by its provisions? As the

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question before the Court was the validity of an insolvent law, which discharged the debtor from all contracts, the distinction must have been made in reference to the operation of the discharge upon contracts made before, and such as were made after the passage of the law, and is, therefore, a case bearing directly upon the question now before the Court. That the power given by the constitution to Congress, to establish uniform laws on the subject of bankruptcies throughout the United States, does not withdraw the subject entirely from the States, is settled by the case of *Sturges* v. *Crowninshield*, (4. *Wheat. Rep.* 191.) It is there expressly held, that "until the power to pass *uniform laws* on the subject of bankruptcies is exercised by Congress, the States are not forbidden to pass a bankrupt law, provided it contain no principle which violates the 10th section of the first article of the constitution of the United States." And this case also decides, that the right of the States to pass bankrupt laws is not *extinguished*, but is only *suspended* by the enactment of a general bankrupt law by Congress, and that a repeal of that law removes disability to the exercise of the power by the States; so that the question now before the Court, is narrowed down to the single inquiry, whether a State bankrupt law, *operating prospectively* upon contracts made after its enactment, impairs the obligation of such contract, within the sense and meaning of the constitution of the United States.

This clause in the constitution has given rise to much discussion, and great diversity of opinion has been entertained as to its true interpretation. Its application to some cases may be plain and palpable, to others more doubtful. But, so far as relates to the particular question now under consideration, the weight of judicial opinions in the State Courts is altogether in favour of the constitutionality of the law, so far as my examination has extended. And, indeed, I am not aware of a single contrary opinion. (13 *Mass. Rep.* 1. 16 *Johns. Rep.* 233. 7 *Johns. Ch. Rep.* 299. 5 *Binn. Rep.* 264. 5. *Hall's L. J.* 520. 6th ed. 475. *Niles' Reg.* 15th of September, 1821. *Townsend* v. *Townsend.*

In proceeding to a more particular examination of the true import of the clause "no State shall pass any law impairing the obligation of contracts," the inquiries which seem naturally to arise are, what is a contract, what its obligation, and what may be said to impair it. As to what constitutes a contract, no diversity of opinion exists; all the elementary writers on the subject, sanctioned by judicial decisions, consider it briefly and simply an agreement in which a competent party undertakes to do, or not to do, a particular thing; but all know, that the

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agreement does not always, nay, seldom, if ever, upon its face, specify the full extent of the terms and conditions of the contract; many things are necessarily implied, and to be governed by some rule not contained in the agreement; and this rule can be no other than the existing law when the contract is made, or to be executed. Take, for example the familiar case of an agreement to pay a certain sum of money, with interest. The amount, or rate of such interest, is to be ascertained by some standard out of the agreement, and the law presumes the parties meant the common rate of interest established in the country where the contract was to be performed. This standard is not looked to for the purpose of removing any doubt or ambiguity arising on the contract itself, but to ascertain the extent of its obligation; or, to put a case more analogous, suppose a statute should declare generally, that all contracts for the payment of money should bear interest after the day of payment fixed in the contract, and a note, where such law was in force, should be made payable in a given number of days after date. Such note would surely draw interest from the day it became payable, although the note upon its face made no provision for interest; and the obligation of the contract to pay the interest would be as complete and binding as to pay the principal; but such would not be its operation without looking out of the instrument itself, to the law which created the obligation to pay interest. The same rule applies to contracts of every description; and parties must be understood as making their contracts with reference to existing laws, and impliedly assenting that such contracts are to be construed, governed, and controlled, by such laws. Contracts absolute, and unconditional, upon their face, are often considered subject to an implied condition which the law establishes as applicable to such cases. Suppose a State law should declare, that in all conveyances thereafter to be made, of real estate, the land should be held as security for the payment of the consideration money, and liable to be sold, in case default should be made in payment: would such a law be unconstitutional? And yet it would vary the contract from that which was made by the parties, if judged of by the face of the deed alone, and would be making a contract conditional, which the parties had made absolute, and would certainly be impairing such contract, unless it was deemed to have been made subject to the provisions of such law, and with reference thereto, and that the law was impliedly adopted as forming the obligation and terms of the contract. The whole doctrine of the *lex loci* is founded on this principle.

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The language of the Court, in the third Circuit, in the ca of *Campanque* v. *Burnell* (1 *Washington* C. C. *Rep.* 341) very strong on this point. Those laws, say the Court, which any manner affect the contract, whether in its *construction*, t *mode of discharging it*, or which control the *obligation* whi the contract imposes, are essentially incorporated with the co tract itself. The contract is a law which the parties impo upon themselves, subject, however, to the paramount law—th law of the country where the contract is made. And when to b enforced by foreign tribunals, such tribunals aim only to give effec to the contracts, according to the laws which gave them validity So, also, in this Court, in the case of *Renner* v. *the Bank of Colum bia*, (9 *Wheat. Rep.* 586.) the language of the Court is to the same effect, and shows that we may look out of the contract, to any known law or custom, with reference to which the par ties may be presumed to have contracted, in order to ascertain their intention, and the legal, and binding force, and obligatio of their contract. The *Bank of Columbia* v. *Oakley*, (4 *Wheat. Rep.* 235.) is another case recognizing the same principle. And in the case of *Dartmouth College* v. *Woodward*, (4 *Wheat. Rep.* 695,) it is well observed by one of the judges of this Court, "that all contracts recognized as valid in any country, ob tain their *obligation* and construction *jure loci contractus.*" And this doctrine is universally recognized, both in the English and American Courts.

If contracts are not made with reference to existing laws, and to be governed and regulated by such laws, the agreement of parties, under the extended construction now claimed for this clause in the constitution, may control State laws on the sub ject, of contracts altogether. A parol agreement for the sale of land is a contract, and if the agreement alone makes the con tract, and it derives its obligation solely from such agreement, without reference to existing law, it would seem to follow, that any law which had declared such contract void, or had denied a remedy for breach thereof, would impair its obligation. A construction involving such consequences is certainly inadmis sible. Any contract not sanctioned by existing laws creates no civil obligation; and any contract discharged in the mode and manner provided by the existing law where it was made, can not, upon any just principles of reasoning, be said to impair such contract.

It will, I believe, be found on examination, that the course of legislation in some of the States between debtor, and creditor, which formed the grounds of so much complaint, and which pro-

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some material part thereof, would seem to differ in degree only, and not in principle; and if to have a retrospective operation, might well be considered as falling within the spirit and policy of the prohibition.

In the case of *Sturges* v. *Crowninshield*, the Court, in explaining the meaning of the terms "obligation of a contract," say, "A contract is an agreement in which a party undertakes to do, or not to do, a particular thing. *The law binds him to perform his undertaking, and this is, of course, the obligation of his contract.* That is, as I understand it, *the law of the contract forms its obligation;* and if so, the contract is fulfilled, and its obligation discharged by complying with whatever the existing law required in relation to such contract; and it would seem to me to follow, that if the law, looking to the contingency of the debtor's becoming unable to pay the whole debt, should provide for his discharge on payment of a part, this would enter into the law of the contract, and the obligation to pay would, of course, be subject to such contingency.

It is unnecessary, however, on the present occasion, to attempt to draw, with precision, the line between the right and the remedy, or to determine whether the prohibition in the constitution extends to the former, and not to the latter, or whether, to a certain extent, it embraces both; for the law in question strikes at the very root of the cause of action, and takes away both right and remedy, and the question still remains, does the prohibition extend to a State bankrupt or insolvent law, like the one in question, when applied to contracts entered into subsequent to its passage. Whether this is technically a bankrupt or an insolvent law, is of little importance. Its operation, if valid, is to discharge the debtor absolutely from all future liability on surrendering up his property, and, in that respect, is a bankrupt law, according to the universal understanding in England, where a bankrupt system is in operation. It is not, however, limited to *traders*, but extends to every class of citizens; and, in this respect, is more analogous to the English insolvent laws, which only authorize the discharge of the debtor from imprisonment.

If this provision in the constitution was unambiguous, and its meaning entirely free from doubt, there would be no door left open for construction, or any proper ground upon which the intention of the framers of the constitution could be inquired into: this Court would be bound to give to it its full operation, whatever might be the views entertained of its expediency. But the

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diversity of opinion entertained of its construction, will fai justify an inquiry into the intention, as well as the reason a policy of the provision; all which, in my judgment, will w rant its being confined to laws affecting contracts made ante dent to the passage of such laws. Such would appear to be t plain and natural interpretation of the words, "no State sh pass any law impairing the obligation of contracts."

The law must have a present effect upon some contract existence, to bring it within the plain meaning of the languag employed. There would be no propriety in saying, that a la impaired, or in any manner whatever modified or altered, wh did not exist. The most obvious and natural application of th words themselves, is to laws having a retrospective operatio upon existing contracts; and this construction is fortified by th associate prohibitions, "no State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." The two first are confessedly restricted to retrospective laws, concerning crimes and penalties affecting the personal security of individuals. And no good reason is perceived why the last should not be restricted to retrospective laws, relating to private rights growing out of the contracts of parties. The one provision is intended to protect the person of the citizen from punishment criminally for any act not unlawful when committed; and the other to protect the rights of property, as secured by contracts sanctioned by existing laws. No one supposes that a State legislature is under any restriction in declaring, prospectively, any acts criminal which its own wisdom and policy may deem expedient. And why not apply the same rule of construction and operation to the other provision relating to the rights of property? Neither provision can strictly be considered as introducing any new principle, but only for greater security and safety to incorporate into this charter provisions admitted by all to be among the first principles of our government. No State Court would, I presume, sanction and enforce an *ex post facto* law; if no such prohibition was contained in the constitution of the United States; so, neither would retrospective laws, taking away vested rights, be enforced. Such laws are repugnant to those fundamental principles, upon which every just system of laws is founded. It is an elementary principle adopted and sanctioned by the Courts of justice in this country, and in Great Britain, whenever such laws have come under consideration, and yet retrospective laws are clearly within this prohibition. It is, therefore, no objection to the view I have taken of this clause in the constitution, that the provision was

unnecessary. The great principle asserted, no doubt, is, as laid down by the Court in *Sturges* v. *Crowninshield, the inviolability* of contracts; and this principle is fully maintained by confining the prohibition to laws affecting antecedent contracts. It is the same principle, we find, cotemporaneously, (13th July 1787, 1 *L. U. S.* 475.) asserted by the old Congress, in an ordinance for the government of the territory of the United States north-west of the river Ohio. By one of the fundamental articles it is provided, that "in the just preservation of *rights and property*, it is understood and declared that no law ought ever to be made, or have force in the territory, that shall in any manner whatever interfere with or affect private contracts or engagements, *bona fide*, and without fraud, *previously* made," thereby pointedly making a distinction between laws affecting contracts antecedently, and subsequently made; and such a distinction seems to me to be founded upon the soundest principles of justice, if there is any thing in the argument, that contracts are made with reference to, and derive their obligation from, the existing law.

That the prohibition upon the States to pass laws impairing the obligation of contracts is applicable to private rights merely, without reference to bankrupt laws, was evidently the understanding of those distinguished commentators on the constitution, who wrote the Federalist. In the 44th number of that work (p. 281.) it is said, that "bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former, are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional defences against these dangers ought not to be omitted. Very properly, therefore, have the Convention added this constitutional bulwark in favour of *personal security* and *private rights*." Had it been supposed that this restriction had for its object the taking from the States the right of passing insolvent laws, even when they went to discharge the contract, it is a little surprising that no intimation of its application to that subject should be found in these commentaries upon the constitution. And it is still more surprising, that if it had been thought susceptible of any such interpretation, that no objection should have been made in any of the States to the constitution on this ground, when the ingenuity of man was on the stretch in many States to defeat its adoption; and partic-

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ularly in the State of New York, where the law now in qu tion was in full force at the very time the State Convention v deliberating upon the adoption of the constitution. But if t prohibition is confined to retrospective laws, as it naturally i ports, it is not surprising that it should have passed without c jection, as it is the assertion of a principle universally approve

It was pressed upon the Court with great confidence, and, it struck me at the time, with much force, that if this restri tion could not reach laws existing at the time the contract w made, State legislatures might evade the prohibition (immed ately preceding) to make any thing but gold and silver a tende in payment of debts, by making the law prospective in its ope ration, and applicable to contracts thereafter to be made. Bu on reflection, I think, no such consequences are involved. Whe we look at the whole clause in which these restrictions are con tained, it will be seen, that the subjects embraced therein are evidently to be divided into two classes; the one of a public and national character, the power over which is entirely taken away from the States; and the other relating to private and personal rights, upon which the States may legislate under the restrictions specified. The former are, "no State shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, emit bills of credit." Thus far there can be no question, that they relate to powers of a general and national character. The next in order is, or "make any thing but gold and silver a tender in payment of debts;" this is founded upon the same principles of public and national policy, as the prohibition to coin money and emit bills of credit, and is so considered in the commentary on this clause in the number of the Federalist I have referred to. It is there said, the power to make any thing but gold and silver a tender in payment of debts, is withdrawn from the States, on the same principles with that of issuing a paper currency. All these prohibitions, therefore, relate to powers of a public nature, and are general and universal in their application, and inseparably connected with national policy. The subject matter is entirely withdrawn from State authority and State legislation. But the succeeding prohibitions are of a different character; they relate to personal security and private rights, viz. or "pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." The subject matter of such laws is not withdrawn from the States; but the legislation thereon must be under the restriction therein imposed. States may legislate on the subject of contracts, but the laws must not impair the obligation of such contracts. A ten-

der of payment necessarily refers to the time when the tender is made, and has no relation to the time when the law authorizing it shall be passed, or when the debt was contracted. The prohibition is, therefore, general and unlimited in its application. It has been urged in argument, that this prohibition to the States to pass laws impairing the obligation of contracts, had in view an object of great national policy, connected with the power to regulate commerce; that the leading purpose was to take from the States the right of passing bankrupt laws. And to illustrate and enforce this position, this clause has been collated with that which gives to Congress the power of passing uniform laws on the subject of bankruptcies; and by transposition of the clause, the constitution is made to read, Congress shall have power to establish uniform laws on the subject of bankruptcies throughout the United States; but no State shall pass any law impairing the obligation of contracts; and this prohibition is made to mean, no State shall pass any bankrupt law.

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No just objection can be made to the collocation, if the grant of the power to Congress, and the prohibition in question to the States, relate to the same subject matter, viz. bankrupt laws. But it appears to me very difficult to maintain this proposition. It is, in the first place, at variance with the decision in *Sturges* v. *Crowninshield*, where it is held, that this power is not taken from the States absolutely, but only in a limited and modified sense. And in the next place, it is not reasonable to suppose, that a denial of this power to the States, would have been couched in such ambiguous terms, if, as has been contended, the giving to Congress the exclusive power to pass bankrupt laws, was the great and leading object of this prohibition, and the preservation of private rights followed only as an incident of minor importance, it is difficult to assign any satisfactory reason, why the denial of the power to the States was not expressed in plain and unambiguous terms, viz. no State shall pass any bankrupt law. This would have been a more natural, and, certainly, a less doubtful form of expression; and, besides, if the object was to take from the States altogether the right of passing bankrupt laws, or insolvent laws having the like operation, why did not the denial of the power extend also to naturalization laws? The grant of the power to Congress on this subject, is contained in the same clause, and substantially in the same words, "To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States." If the authority of Congress on the

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subject of naturalization is exclusive, from the nature of the pow why is it not, also, with respect to bankruptcies? And if, in the case the denial of the power to the States was necessary, it w equally so in the other. I cannot think, therefore, that the pr hibition to pass laws impairing the obligation of contracts, h any reference to a general system of bankrupt or insolvent law Such a system, established by the sovereign legislative pow of the general, or State governments, cannot, in any just sens be said to impair the obligation of contracts. In every goven ment of laws there must be a power somewhere to regulat civil contracts; and where, under our system, is that power vest ed? It must be either in the general or State governments There is certainly no such power granted to the general govern ment, and all power not granted is reserved to the States. Th whole subject, therefore, of the regulation of contracts mus remain with the States, and be governed by their laws respec tively; and to deny to them the right of prescribing the terms and conditions upon which persons shall be bound by their con tracts thereafter made, is imposing upon the States a limitation, for which I find no authority in the constitution; and no contract can impose a civil obligation beyond that prescribed by the ex isting law when the contract was made; nor can such obligation be impaired by controlling and discharging the contract accord ing to the provisions of such law. Suppose a contract for the payment of money should contain an express stipulation by the creditor to accept a proportional part, in case the debtor should become insolvent, and to discharge the contract, can there be a doubt that such contract would be enforced? And what is the law in question but such contract, when applied to the undertak ing of Ogden by accepting these bills. It is no strained con struction of the transaction, to consider the contract and the law inseparable, when judging of the *obligation* imposed upon the debtor; and, if so, the undertaking was conditional, and the holder of the bills agreed to accept a part in case of the inabili ty of the acceptor, by reason of his insolvency, to pay the whole.

The unconstitutionality of this law is said to arise from its exempting the property of the insolvent, acquired after his dis charge, from the payment of his antecedent debts. A discharge of the person of the debtor is admitted to be no violation of the contract. If this objection is well founded, it must be on the ground, that the obligation of every contract attaches upon the property of the debtor, and any law exonerating it, violates this obligation. I do not mean that the position implies a lien by way

of mortgage, or pledge, on any specific property, but that all the property which a debtor has, when called upon for payment, is liable to be taken in execution to satisfy the debt, and that a law releasing any portion of it impairs the obligation of the contract. The force and justice of this position, when applied to contracts existing at the time the law is passed, is not now drawn in question. But its correctness, when applied to contracts thereafter made, is denied. The mode, and manner, and the extent to which property may be taken in satisfaction of debts, must be left to the sound discretion of the legislature, and regulated by its views of policy and expediency, in promoting the general welfare of the community, subject to such regulation. It was the policy of the common law, under the feudal system, to exempt lands altogether from being seized, and applied in satisfaction of debts; not even possession could be taken from the tenant. There can be no natural right growing out of the relation of debtor and creditor, that will give the latter an unlimited claim upon the property of the former. It is a matter entirely for the regulation of civil society; nor is there any fundamental principle of justice, growing out of such relation, that calls upon government to enforce the payment of debts to the uttermost farthing which the debtor may possess; and that the modification and extent of such liabilaty, is a subject within the authority of State legislation, seems to be admitted by the uninterrupted exercise of it. I have not deemed it necessary to look into the statute books of all the States on this subjeet, but think it may be safely affirmed, that in most, if not all the States, some limitation of the right of the creditor, over the property of the debtor, has been established. In New-York, various articles of personal property are exempted from execution. In Rhode Island, real estate cannot at all be taken on judicial process for satisfaction of a debt, so long as the body of the debtor is to be found within the State; and Virginia has adopted the English process of elegit, and a moiety only of the debtor's freehold is delivered to the creditor, until, out of the rents and profits thereof, the debt is paid. Do these statute regulations impair the obligation of contracts? I presume this will not be contended for; and yet they would seem to me to fall within the principle urged on the part of the defendant in error.

It is no satisfactorily answer to say, that such laws relate to the remedy. The principle asserted is, that the creditor has a right to his debtor's property by virtue of the obligation of the contract, to the full satisfaction of the debt; and if so, a law, which in any shape exempts any portion of it, must impair the

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obligation of the contract. Such a limitation and restric upon the powers of the State governments cannot, in my ju ment, be supported, under the prohibition to pass laws imp ing the obligation of contracts.

If the letter of the constitution does not imperiously dem a construction which denies to the States the power of pass insolvent laws like the one in question, policy and expedie require a contrary construction. Although there may be so diversity of opinion as to the policy of establishing a gene bankrupt system in the United States, yet it is generally adm ted that such laws are useful, if not absolutely necessary, in commercial community. That it was the opinion of the fra ers of the constitution, that the power to pass bankrupt law ought somewhere to exist, is clearly inferrable from the grant such power to Congress. A contrary conclusion would involv the greatest absurdity. The specific power, however, grante to Congress, never did, nor never could, exist in the State go vernments. That power is to establish *uniform laws* on th subject of bankruptcies throughout the United States, whic could only be done by a government having co-extensive juris diction. Congress not having as yet deemed it expedient to exercise the power of re-establishing a uniform system of bank- ruptcy, affords no well-founded argument against the expedien- cy or necessity of such a system in any particular State. A bankrupt law is most necessary in a commercial community; and as different States in this respect do not stand on the same foot- ing, a system which might be adapted to one, might not suit all, which would naturally present difficulties in forming any uni- form system; and Congress may, as heretofore, deem it expedi- ent to leave each State to establish such system as shall best suit its own local circumstances and views of policy, knowing, at the time, that if any great public inconvenience shall grow out of the different State laws, the evils may be corrected by establish- ing a uniform system, according to the provision of the consti- tution, which will suspend the State laws on the subject. If such should be the views entertained by Congress, and induce them to abstain from the exercise of the power, the importance to the State of New York, as well as other States, of establish- ing the validity of laws like the one in question, is greatly in- creased. The long continuance of it there, clearly manifest the views of the State legislature with respect to the policy and expediency of the law. And I cannot but feel strongly impres- sed, that the length of time which this law has been in undispu- ted operation, and the repeated sanction it has received from

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every department of the government, ought to have great weight when judging of its constitutionality.

The provisions of the 61st section of the bankrupt law of 1800, appear to me to contain a clear expression of the opinion of Congress in favour of the validity of this, and similar laws in other States. It cannot be presumed they were ignorant of the existence of these laws, or their extent and operation. And, indeed, the section expressly assumes the existence of such laws, by declaring that this act shall not repeal or annul the laws of any State now in force, or which may be *thereafter* enacted for the relief of insolvent debtors, except so far as the same may affect *persons within the purview of the bankrupt act;* and even with respect to such persons, it provides that, if the creditors shall not prosecute a commission of bankruptcy within a limited time, they shall be entitled to relief under the State laws for the relief of insolvent debtors. And what relief did such laws give? Was it merely from imprisonment only? Certainly not. The State laws here ratified and sanctioned, or, at least, some of them, were such as had the full effect and operation of a bankrupt law, to wit: to discharge the debtor absolutely from all future responsibility. It is true, if these laws were unconstitutional and void, this section of the bankrupt law could give them no validity. But it is not in this light the argument is used. The reference is only to show the sense of Congress with respect to the validity of such laws; and, if it is fair to presume Congress was acquainted with the extent and operation of these laws, this clause is a direct affirmation of their validity. For it cannot be presumed that body would have expressly ratified and sanctioned laws which they considered unconstitutional.

In the case of *Sturges* v. *Crowninshield*, as I have before remarked, it is said, that by this prohibition (Art. 1. sec. 10.) in the constitution, the Convention appears to have intended to establish a great principle, "*that contracts should be inviolable.*" This was certainly, though a great, yet not a *new* principle. It is a principle inherent in every sound and just system of laws, independent of express constitutional restraints. And if the assertion of this principle was the object of the clause, (as I think it was,) is it reasonable to conclude, that the framers of the constitution supposed that a bankrupt or insolvent law, like the one in question, would violate this principle? Can it be supposed that the constitution would have reserved the right, and impliedly enjoined the duty upon Congress to pass a bankrupt law, if it had been thought that such law would violate this great prin-

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ciple? If the discharge of a party from the performance of his contracts, when he has, by misfortunes, become incapable of fulfilling them, is a violation of the eternal and unalterable principles of justice, growing out of what has been called at the bar, the universal law, can it be, that a power, drawing after it such consequences, has been recognised and reserved in our constitution? Certainly not. And is the discharge of a contract any greater violation of those sacred principles in a State legislature, than in that of the United States? No such distinction will be pretended. But a bankrupt or insolvent law involves no such violation of the great principles of justice, and this is not the light in which it always has been, and ought to be, considered. Such law, in its principle and object, has in view the benefit of both debtor and creditor, and is no more than the just exercise of the sovereign legislative power of the government to relieve a debtor from his contracts, when necessity, and unforeseen misfortunes, have rendered him incapable of performing them; and whether this power is to be exercised by the States individually, or by the United States, can make no difference in principle. In a government like ours, where sovereignty, to a modified extent, exists both in the States, and in the United States. It was, in the formation of the constitution, a mere question of policy and expediency, where this power should be exercised; and there can be no question, but that, so far as respects a bankrupt law, properly speaking, the power ought to be exercised by the general government. It is naturally connected with commerce, and should be uniform throughout the United States. A bankrupt system deals with commercial men, but this affords no reason why a State should not exercise its sovereign power in relieving the necessities of men who do not fall within the class of traders, and who, from like misfortune, have become incapable of performing their contracts.

Without questioning the constitutional power of Congress to extend a bankrupt law to all classes of debtors, the expediency of such a measure may well be doubted. There is not the same necessity of uniformity of system, as to other classes than traders; their dealings are generally local, and different considerations of policy may influence different States on this subject; and should Congress pass a bankrupt law confined to traders, it would still leave the insolvent law of New-York in force as to other classes of debtors, subject to such alteration as that State shall deem expedient.

Upon the whole, therefore, it having been settled by this

Court, that the States have a right to pass bankrupt laws, provided they do not violate the prohibition against impairing the obligation of contracts; and believing, as I do, for the reasons I have given, that the insolvent law in question, by which a debtor obtains a discharge from all future responsibility, upon contracts entered into after the passage of the law, and before his discharge, does not impair the obligation of his contracts; I am of opinion, that the judgment of the Court below ought to be reversed.

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Mr. Justice TRIMBLE. The question raised upon the record in this case, and which has been discussed at the bar, may be stated thus: Has a State, since the adoption of the constitution of the United States, authority to pass a bankrupt or insolvent law, discharging the bankrupt or insolvent from all contracts made within the State after the passage of the law, upon the bankrupt or insolvent surrendering his effects, and obtaining a certificate of discharge from the constituted authorities of the State.

The counsel for the defendant in error have endeavoured to maintain the negative of the proposition, on two grounds:

First. That the power conferred on Congress by the constitution, "to establish uniform laws on the subject of bankruptcies throughout the United States," is, in its nature, an exclusive power; that, consequently, no State has authority to pass a bankrupt law; and that the law under consideration is a bankrupt law.

Secondly. That it is a law impairing the obligation of contracts, within the meaning of the constitution.

In the case of *Sturges* v. *Crowninshield*, (4 *Wheat. Rep.* 122.) this Court expressly decided, "that since the adoption of the constitution of the United States, a State has authority to pass a bankrupt law, provided such law does not impair the obligation of contracts, within the meaning of the constitution, and provided there be no act of Congress in force to establish a uniform system of bankruptcy conflicting with such law."

This being a direct judgment of the Court, overruling the first position assumed in argument, that judgment ought to prevail, unless it be very clearly shown to be erroneous.

Not having been a member of the Court when that judgment was given, I will content myself with saying, the argument has not convinced me it is erroneous; and that, on the contrary, I think the opinion is fully sustained by a sound construction of the constitution.

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There being no act of Congress in force to establish a form system of bankruptcy, the first ground of argument n fail.

It is argued, that the law under consideration is a law imp ing the obligation of contracts within the meaning of the con tution. The 10th section of the 1st art. of the constitution i these words: no State shall enter into any treaty, alliance, confederation, grant letters of marque and reprisal; coin mon emit bills of credit; make any thing but gold and silver coi tender in payment of debts; pass any bill of attainder, *ex p facto* law, or law impairing the obligation of contracts; or gra any title of nobility."

In the case of *Sturges* v. *Crowninshield*, the defendant in t original suit had been discharged in New York, under an inso vent law of that State, which purported to apply to past as we as future contracts; and being sued on a contract made withi the State prior to the passage of the law, he pleaded his certifi cate of discharge in bar of the action. In answer to the 3d an 4th questions, certified from the Circuit Court to this Court for it final decision, drawing in question the constitutionality of th law, and the sufficiency of the plea in bar founded upon it, thi Court certified its opinion, "that the act of New-York, pleaded in this case, so far as it attempts to discharge the contract on which this suit was instituted, is a law impairing the obligation of contracts, within the meaning of the constitution of the Unit- ed States; and that the plea of the defendant is not a good and sufficient bar of the plaintiff's action.

In the case of *M'Millan* v. *M'Neill*, (4 *Wheat. Rep.* 209.) the defendant in the Court below pleaded a discharge obtained by him in Louisiana, on the 23d of August, 1815, under the in- solvent law of that State, passed in 1808, in bar of a suit insti- tuted against him upon a contract made in South Carolina, in the year 1813. This Court decided that the plea was no bar to the action; and affirmed the judgment given below for the plaintiff.

These cases do not decide the case at bar. In the first, the discharge was pleaded in bar to a contract made prior to the passage of the law; and in the second, the discharge obtained in one State under its laws, was pleaded to a contract made in another State. They leave the question open, whether a dis- charge obtained in a State, under an insolvent law of the State, is a good bar to an action brought on a contract made within the State after the passage of the law.

In presenting this inquiry, it is immaterial whether the law

purports to apply to past as well as future contracts, or is wholly prospective in its provisions.

It is not the terms of the law, but its effect, that is inhibited by the constitution. A law may be in part constitutional, and in part unconstitutional. It may, when applied to a given case, produce an effect which is prohibited by the constitution; but it may not, when applied to a case differently circumstanced, produce such prohibited effect. Whether the law under consideration, in its effects and operation upon the contract sued on in this case, be a law impairing the obligation of this contract, is the only necessary inquiry.

In order to come to a just conclusion, we must ascertain, if we can, the sense in which the terms, "obligation of contracts," is used in the constitution. In attempting to do this, I will premise, that in construing an instrument of so much solemnity and importance, effect should be given, if possible, to every word. No expression should be regarded as a useless expletive; nor should it be supposed, without the most urgent necessity, that the illustrious framers of that instrument had, from ignorance or inattention, used different words, which are, in effect, merely tautologous.

I understand it to be admitted in argument, and if not admitted, it could not be reasonably contested, that, in the nature of things, there is a difference between a *contract*, and the *obligation* of the contract. The terms contract, and obligation, although sometimes used loosely, as convertible terms, do not properly impart the idea. The constitution plainly presupposes that a contract and its obligation are different things. Were they the same thing, and the terms, contract and obligation convertible, the constitution, instead of being read as it now is, "that no State shall pass any law impairing the obligation of contracts," might, with the same meaning, be read, "that no State shall pass any law impairing the *obligation* of *obligations*," or, "the contract of contracts;" and to give to the constitution the same meaning which either of these readings would import, would be ascribing to its framers a useless and palpably absurd tautology. The illustrious framers of the constitution could not be ignorant that there were, or might be, many contracts without obligation, and many obligations without contracts. "A contract is defined to be, an agreement in which a party undertakes to do, or not to do, a particular thing." *Sturges* v. *Crowninshield*, (4 *Wheat. Rep.* 197.)

This definition is sufficient for all the purposes of the present

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investigation, and its general accuracy is not contested by either side.

From the very terms of the definition, it results incontestibly, that the contract is the sole act of the parties, and depends wholly on their will. The same words, used by the same parties, with the same objects in view, would be the same contract, whether made upon a desert island, in London, Constantinople, or New-York. It would be the *same contract*, whether the law of the place where the contract was made, recognised its validity, and furnished remedies to enforce its performance, or prohibited the contract, and withheld all remedy for its violation.

The language of the constitution plainly supposes that the *obligation* of a contract is something not wholly depending upon the will of the parties. It incontestibly supposes the obligation to be something which attaches to, and lays hold of the contract, and which, by some superior external power, regulates and controls the conduct of the parties in relation to the contract; it evidently supposes that superior external power to rest in the will of the legislature.

What, then, is the obligation of contracts, within the meaning of the constitution? From what source does that obligation arise?

The learned Chief Justice, in delivering the opinion of the Court, in *Sturges* v. *Crowninshield*, after having defined a contract to be "an agreement wherein a party undertakes to do, or not to do, a particular thing," proceeds to define the obligation of the contract in these words: "the *law* binds him to perform his engagement, and *this* is, of course, the obligation of the contract."

The *Institutes*, lib. 3. tit. 4. (Cooper's translation,) says, "an obligation is the *chain of the law*, by which we are necessarily bound to make some payment, according to the law of the land."

Pothier, in his treatise concerning obligations, in speaking of the obligation of contracts, calls it "*vinculum legis*," the chain of the law. *Paley*, p. 56. says, "to be obliged, is to be urged by a violent motive, resulting from the command of another." From these authorities, and many more might be cited, it may be fairly concluded, that the obligation of the contract consists in the *power and efficacy* of the law which applies to, and enforces performance of the contracts, or the payment of an equivalent for non-performance. The obligation does not inhere, and subsist in the contract itself, *proprio vigore*, but in the law applicable to the contract. This is the sense, I think, in which the constitution uses the term "obligation."

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From what law, and how, is this obligation derived, within the meaning of the constitution? Even if it be admitted that the moral law necessarily attaches to the agreement, that would not bring it within the meaning of the constitution. Moral obligations are those arising from the admonitions of conscience and accountability to the Supreme Being. No human lawgiver can impair them. They are entirely foreign from the purposes of the constitution. The constitution evidently contemplates an obligation which might be impaired by a law of the State, if not prohibited by the constitution.

It is argued, that the obligation of contracts is founded in, and derved from, general and universal law; that, by these laws, the obligation of contracts is co-extensive with the duty of performance, and, indeed, the same thing; that the obligation is not derived from, nor depends upon, the civil or municipal laws of the State; and that this general universal duty, or obligation, is what the constitution intends to guard and protect against the unjust encroachments of State legislation. In support of this doctrine, it is said, that no State, perhaps, ever declared by statute or positive law that contracts shall be obligatory; but that all States, assuming the pre-existence of the obligation of contracts, have only superadded, by municipal law, the means of carrying the pre-existing obligation into effect.

This argument struck me, at first, with great force; but, upon reflection, I am convinced it is more specious than solid. If it were admitted, that in an enlarged and very general sense, obligations have their foundation in natural, or what is called, in the argument, universal law; that this natural obligation is, in the general, assumed by States as pre-existing, and, upon this assumption, they have not thought it necessary to pass declaratory laws in affirmance of the principles of universal law: yet nothing favourable to the argument can result from these admissions, unless it be further admitted, or proved, that a State has no authority to regulate, alter, or in any wise control, the operation of this universal law within the State, by its own peculiar municipal enactions. This is not admitted, and, I think, cannot be proved.

I admit that men have, by the laws of nature, the right of acquiring, and possessing property, and the right of contracting engagements. I admit, that these natural rights have their correspondent natural obligations. I admit, that, in a state of nature, when men have not submitted themselves to the controlling authority of civil government, the natural obligation of contracts is co-extensive with the duty of performance. This natu-

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ral obligation is founded solely in the principles of natural & universal law. What is this natural obligation? All writers who treat on the subject of obligations, agree, that it consists in the right of the one party to demand from the other party what is due; and if it be withheld, in his right, and supposed capacity to enforce performance, or to take an equivalent for non-performance, by his own power. This natural obligation exists among sovereign and independent States and nations, and amongst men, in a State of nature, who have no common superior, and over whom none claim, or can exercise, a controlling legislative authority.

But when men form a social compact, and organize a civil government, they necessarily surrender the regulation and control of these natural rights and obligations into the hands of the government. Admitting it, then, to be true, that, in general, men derive the right of private property, and of contracting engagements, from the principals of natural, universal law; admitting that these rights are, in the general, not derived from, or created by society, but are brought into it; and that no express, declaratory, municipal law, be necessary for their creation or recognition; yet, it is equally true, that these rights, and the obligations resulting from them, are subject to be regulated, modified, and, sometimes, absolutely restrained, by the positive enactions of municipal law. I think it incontestibly true, that the *natural* obligation of *private* contracts between individuals in society, ceases, and is converted into a *civil* obligation, by the very act of surrendering the right and power of enforcing performance into the hands of the government. The right and power of enforcing performance exists, as I think all must admit, only in the law of the land, and the obligation resulting from this condition is a civil obligation.

As, in a state of nature, the natural obligation of a contract consists in the right and potential capacity of the individual to take, or enforce the delivery of the thing due to him by the contract, or its equivalent; so, in the social state, the obligation of a contract consists in the efficacy of the civil law, which attaches to the contract, and enforces its performance, or gives an equivalent in lieu of performance. From these principles it seems to result as a necessary corallary, that the obligation of a contract made within a sovereign State, must be precisely that allowed by the law of the State, and none other. I say *allowed* because, if there be nothing in the municipal law to the contrary, the civil obligation being, by the very nature of government, substituted for, and put in the place of, natural obligation, would be co-extensive with it; but if by positive enactions, the civil

obligation is regulated and modified so as that it does not correspond with the natural obligation, it is plain the extent of the obligation must depend wholly upon the municipal law. If the positive law of the State declares the contract shall have no obligation, it can have no obligation, whatever may be the principles of natural law in relation to such a contract. This doctrine has been held and maintained by all States and nations. The power of controlling, modifying, and even of taking away, all obligation from such contracts as, independent of positive enactions to the contrary, would have been obligatory, has been exercised by all independent sovereigns; and it has been universally held, that the Courts of one sovereign will, upon principles of comity and common justice, enforce contracts made within the dominions of another sovereign, so far as they were obligatory by the law of the country where made; but no instance is recollected, and none is believed to exist, where the Courts of one sovereign have held a contract, made within the dominions of another, obligatory against, or beyond the obligation assigned to it by the municipal law of its proper country. As a general proposition of law, it cannot be maintained, that the obligation of contracts depends upon, and is derived from, universal law, independent of, and against, the civil law of the State in which they are made. In relation to the States of this Union, I am persuaded, that the position that the obligation of contracts is derived from universal law, urged by the learned counsel in argument, with great force, has been stated by them much too broadly. If true, the States can have no control over contracts. If it be true that the "obligation of contracts," within the meaning of the constitution, is derived solely from general and universal law, independent of the laws of the State, then it must follow, that all contracts made in the same or similar terms, must, whenever or wherever made, have the same obligation. If this universal natural obligation is that intended by the constitution, as it is the same, not only every where, but at all times, it must follow, that every description of contract which could be enforced at any time or place, upon the principles of universal law, must, necessarily, be enforced at all other times, and in every State, upon the same principles, in despite of any positive law of the State to the contrary.

The arguments, based on the notion of the obligation of universal law, if adopted, would deprive the States of all power of legislation upon the subject of contracts, other than merely furnishing the remedies or means of carrying this obligation of

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universal law into effect. I cannot believe that such consequences were intended to be produced by the constitution.

I conclude, that, so far as relates to private contracts betwe individual and individual, it is the civil obligation of contrac that obligation which is recognized by, and results from, t law of the State in which the contract is made, which is with the meaning of the constitution. If so, it follows, that the Stat have, since the adoption of the constitution, the authority t prescribe and declare, by their laws, prospectively, what sha be the obligation of all contracts made within them. Such power seems to be almost indispensable to the very existence o the States, and is necessary to the safety and welfare of the peo ple. The whole frame and theory of the constitution seems t favour this construction. The States were in the full enjoyment and exercise of all the powers of legislation on the subject of contracts, before the adoption of the constitution. The people of the States, in that instrument, transfer to, and vest in the Congress, no portion of this power, except in the single instance of the authority given to pass uniform laws on the subject of bankruptcies throughout the United States; to which may be added, such as results by necessary implication in carrying the granted power into effect. The whole of this power is left with the States, as the constitution found it, with the single exception, that in the exercise of their general authority they shall pass no law "impairing the obligation of contracts."

The construction insisted upon by those who maintain that prospective laws of the sort now under consideration are unconstitutional, would, as I think, transform a special limitation upon the general powers of the States, into a general restriction. It would convert, by construction, the exception into a general rule, against the best settled rules of construction. The people of the States, under every variety of change of circumstances, must remain unalterably, according to this construction, under the dominion of this supposed universal law, and the obligations resulting from it. Upon no acknowledged principle can a special exception, out of a general authority, be extended by construction so as to annihilate or embarrass the exercise of the general authority. But, to obviate the force of this view of the subject, the learned counsel admit, that the legislature of a State has authority to provide by law what contracts shall not be obligatory, and to declare that no remedy shall exist for the enforcement of such as the legislative wisdom deems injurious. They say, the obligation of a contract is coeval with its existence; that the moment an agreement is made, obligation attach-

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es to it; and they endeavoured to maintain a distinction between such laws as declare that certain contracts shall not be obligatory at all, and such as declare they shall not be obligatory, or (what is the same thing in effect) shall be discharged, upon the happening of a future event. The former, they say, were no contracts in contemplation of law, were wholly forbidden, and, therefore, never obligatory; the latter were obligatory at their creation, and that *obligation* is protected by the constitution from being impaired by any future operation of the law.

This course of reasoning is ingenious and perplexing; but I am greatly mistaken if it will not be found, upon examination, to be unsatisfactory and inconclusive. If it were admitted, that, generally, the civil obligation of a contract made in a State attaches to it when it is made, and that this obligation, whatever it be, cannot be defeated, by any effect or operation of law, which does not attach to it at its creation, the admission would avail nothing. It is as well a maxim of political law, as of reason, that the whole must necessarily contain all the parts; and, consequently, a power competent to declare a contract shall have no obligation, must necessarily be competent to declare it shall have only a conditional or qualified obligation.

If, as the argument admits, a contract never had any obligation, because the pre-existing law of the State, declaring it should have none, attached to it at the moment of its creation, why will not a pre-existing law, declaring it shall have only a qualified obligation, attach to it in like manner at the moment of its creation? A law, declaring that a contract shall not be enforced, upon the happening of a future event, is a law declaring the contract shall have only a qualified or conditional obligation. If such law be passed before the contract is made, does not the same attach to it the moment it is made; and is not the obligation of the contract, whatever may be its terms, qualified from the beginning by force and operation of the existing law? If it is not, then it is absolute in despite of the law, and the obligation does not result from the law of the land, but from some other law.

The passing of a law declaring that a contract shall have *no obligation*, or shall have obligation generally, but cease to be obligatory in specified events, is but the exertion of the same power. The difference exists, not in the character of the power, but the degree of its exertion, and the manner of its operation.

In the case at bar, the contract was made in the State, and the law of the State at the time it was made, in effect, provid-

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ed that the obligation of the contract should not be absolute, l qualified by the condition that the party should be discharg upon his becoming insolvent, and complying with the requi tions of the insolvent law. This qualification attached to t contract, by law, the moment the contract was made, becam inseparable from it, and travelled with it through all its stages existence, until the condition was consummated by the final ce tificate of discharge.

It is argued that this cannot be so, because the contract woul be enforced, and must necessarily be enforced, in other States where no such insolvent law exists. This argument is founde upon a misapprehension of the nature of the qualification itself It is in nature of a condition subsequent, annexed by operation of law to the contract at the moment of its creation.

The condition is, that upon the happening of all the events contemplated by the law, and upon their verification, in the manner prescribed by the law itself, by the constituted authorities of the State, the contract shall not thereafter be obligatory. Unless all these take place; unless the discharge is actually obtained within the State, according to its laws, the contingency has not happened, and the contract remains obligatory, both in the State and elsewhere.

It has been often said, that the laws of a State in which a contract is made, enter into, and make part of the contract; and some who have advocated the constitutionality of prospective laws of the character now under consideration, have placed the question on that ground. The advocates of the other side, availing themselves of the infirmity of this argument, have answered triumphantly, "admitting this to be so, the constitution is the supreme law of every State, and must, therefore, upon the same principle, enter into every contract, and overrule the local laws." My answer to this view of both sides of the question is, that the argument, and the answer to it, are equally destitute of truth.

I have already shown that the contract is nothing but the agreement of the parties; and that if the parties, in making their agreement, use the same words, with the same object in view, where there is no law, or where the law recognizes the agreement, and furnishes remedies for its enforcement, or where the law forbids, or withholds all remedy for the enforcement of the agreement, it is the very same contract in all these predicaments. I have endeavoured to show, and I think successfully, that the obligation of contracts, in the sense of the constitution, consists not in the contract itself, but in a superior external

force, controlling the conduct of the parties in relation to the contract; and that this superior external force is the law of the State, either tacitly or expressly recognizing the contract, and furnishing means whereby it may be enforced. It is this superior external force, existing potentially, or actually applied, "which binds a man to perform his engagements;" which, according to Justinian, is "the chain of the law, by which we are necessarily bound to make some payment—*according to the law of the land;*" and which, according to Paley, being "a violent motive, resulting from the command of another," obliges the party to perform his contract. The law of the State, although it constitutes the obligation of the contract, is no part of the contract, itself, nor is the constitution either a part of the contract, or the supreme law of the State, in the sense in which the argument supposes. The constitution is the supreme law of the land upon all subjects upon which it speaks. It is the sovereign will of the whole people. Whatever this sovereign will enjoins, or forbids, must necessarily be supreme, and must counteract the subordinate legislative will of the United States, and of the States.

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But on subjects, in relation to which the sovereign will is not declared, or fairly and necessarily implied, the constitution cannot, with any semblance of truth, be said to be the supreme law. It could not, with any semblance of truth, be said that the constitution of the United States is the supreme law of any State in relation to the solemnities requisite for conveying real estate, or the responsibilities or obligations consequent upon the use of certain words in such conveyance. The constitution contains *no law*, no declaration of the sovereign will, upon these subjects; and cannot, in the nature of things, in relation to them, be the supreme law. Even if it were true, then, that the law of a State in which a contract is made, is part of the contract, it would not be true that the constitution would be part of the contract. The constitution no where professes to give the law of contracts, or to declare what shall or shall not be the obligation of contracts. It evidently presupposes the existence of contracts by the act of the parties, and the existence of their obligation, not by authority of the constitution, but by authority of law; and the pre-existence of both the contracts and their obligation being thus supposed, the sovereign will is announced, that "no State shall pass any law impairing the obligation of contracts."

If it be once ascertained that a contract existed, and that an obligation, general or qualified, or of whatsoever kind, had once attached, or belonged to the contract, by law, then, and not till

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then, does the supreme law speak, by declaring *that* obligati shall not be impaired.

It is admitted in argument, that statutes of frauds and perj ries, statutes of usury, and of limitation, are not laws impairi the obligation of contracts. They are laws operating prospe tively upon contracts thereafter made. It is said, however, the do not apply, in principle, to this case; because the statutes c frauds and perjuries apply only to the remedies, and because, i that case, and under the statutes of usury, the contracts wer void from the beginning, were not recognised by law as con tracts, and had no obligation; and that the statutes of limitation create rules of evidence only.

Although these observations are true, they do not furnish the true reason, nor indeed, any reason, why these laws do not impair the obligation of contracts. The true and only reason is, that they operate on contracts made after the passage of the laws, and not upon existing contracts. And hence the Chief Justice very properly remarks, of both usury laws, and laws of limitation, in delivering the opinion in *Sturges* v. *Crowninshield*, that if they should be made to operate upon contracts already entered into, they would be unconstitutional and void. If a statute of frauds and perjuries should pass in a State formerly having no such laws, purporting to operate upon existing contracts, as well as upon those made after its passage, could it be doubted, that so far as the law applied to, and operated upon, existing contracts, it would be a law "impairing the obligation of contracts?" Here, then, we have the true reason and principles of the constitution. The great principle intended to be established by the constitution, was the inviolability of the *obligation* of contracts, as the obligation existed and was recognised by the laws in force at the time the contracts were made. It furnished to the legislatures of the States a simple and obvious rule of justice, which, however theretofore violated, should by no means, be thereafter violated; and whilst it leaves them at full liberty to legislate upon the subject of all future contracts, and assign to them either no obligation, or such qualified obligation, as in their opinion, may consist with sound policy, and the good of the people; it prohibits them from retrospecting upon existing obligations, upon any pretext whatever. Whether the law professes to apply to the contract itself, to fix a rule of evidence, a rule of interpretation, or to regulate the remedy, it is equally within the true meaning of the constitution, if it, in effect, impairs the obligation of existing contracts; and, in my opinion, is out of its true meaning, if the law is made to operate on future

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contracts only. I do not mean to say, that every alteration of the existing remedies would impair the obligation of contracts; but I do say, with great confidence, that a law taking away all remedy from existing contracts, would be, manifestly, a law impairing the obligation of contracts. The moral obligation would remain, but the legal, or civil obligation, would be gone, if such a law should be permitted to operate. The natural obligation would be gone, because the laws forbid the party to enforce performance by his own power. On the other hand, a great variety of instances may readily be imagined, in which the legislature of a State might alter, modify, or repeal existing remedies, and enact others in their stead without the slighest ground for a supposition that the new law impaired the obligation of contracts. If there be intermediate cases of a more doubtful character, it will be time enough to decide them when they arise.

It is argued, that as the clause declaring that "no State shall pass any law impairing the obligation of contracts," is associated in the same section of the constitution with the prohibition to "coin money, emit bills of credit," or, "make any thing but gold and silver coin a legal tender in payment of debts;" and as these all evidently apply to legislation in reference to future, as well as existing contracts, and operate prospectively, to prohibit the action of the law, without regard to the time of its passage, the same construction should be given to the clause under consideration.

This argument admits of several answers. First, as regards the prohibition to coin money, and emit bills of credit. The constitution had already conferred on Congress the whole power of coining money, and regulating the current coin. The grant of this power to Congress, and the prohibitions upon the States, evidently take away from the States all power of legislation and action on the subject, and must, of course, apply to the future action of laws, either then made, or to be made. Indeed, the language plainly indicates, that it is the *act* of "coining money," and the *act* of emitting bills of credit, which is forbidden, without any reference to the time of passing the law, whether before or after the adoption of the constitution. The other prohibition, to "make any thing but gold or silver coin a tender in payment of debts," is but a member of the same subject of currency committed to the general government, and prohibited to the States. And the same remark applies to it already made as to the other two. The prohibition is not, that no State shall *pass* any law; but that even if a law does exist, the "State shall

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not make any thing but gold and silver coin a legal tender The language plainly imports, that the prohibited tender shall n be made a *legal* tender, whether a law of the State exists o not. The whole subject of tender, except in gold and silver, i withdrawn from the States. These cases cannot, therefor furnish a sound rule of interpretation for that clause which pro hibits the States from *passing* laws "impairing the obligation o contracts." This clause relates to a subject confessedly lef wholly with the States, with a single exception; they relate t subjects wholly withdrawn from the States, with the exceptio that they may pass laws on the subject of tender in gold and silver coin only.

The principle, that the association of one clause with another of like kind, may aid in its construction, is deemed sound; but I think it has been misapplied in the argument. The principle applied to the immediate associates of the words under consideration, is, I think, decisive of this question. The immediate associates are the prohibitions to pass bills of attainder, and *ex post facto* laws. The language and order of the whole clause is, no State shall "pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." If the maxim *noscitur a sociis*, be applied to this case, there would seem to be an end of the question. The two former members of the clause undeniably prohibit retroactive legislation upon the existing state of things, at the passage of the prohibited laws. The associated idea is, that the latter member of the same clause should have a similar effect upon the subject matter to which it relates. I suppose this was the understanding of the American people when they adopted the constitution. I am justified in this supposition by the contemporary construction given to the whole of this clause by that justly celebrated work, styled the Federalist, written at the time, for the purpose of recommending the constitution to the favour and acceptance of the people. In No. 44. (p. 281.) commenting upon this very clause, and all its members, the following observations are made: "Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters."

Did the American people believe, could they believe, these heavy denunciations were levelled against laws which fairly prescribed, and plainly pointed out, to the people, rules for their

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future conduct; and the rights, duties and obligations, growing out of their future words or actions? They must have understood, that these denunciations were just, as regarded bills of attainder, and *ex post facto* laws, because they were exercises of arbitrary power, perverting the justice and order of existing things by the reflex action of these laws. And would they not naturally and necessarily conclude, the denunciations were equally just as regarded laws passed to impair the obligation of existing contracts, for the same reason?

The writer proceeds: "Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the Convention added this constitutional bulwark in favour of personal security and private rights; and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments, as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret, and with indignation, that sudden changes, and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators; and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

I cannot understand this language otherwise than as putting bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, all upon the same footing, and deprecating them all for the same cause. The language shows, clearly, that the whole clause was understood at the time of the adoption of the constitution to have been introduced into the instrument in the very same spirit, and for the very same purpose, namely, for the protection of personal security and of private rights. The language repels the idea, that the member of the clause immediately under consideration was introduced into the constitution upon any grand principle of national policy, independent of the protection of private rights, so far as such an idea can be repelled, by the total omission to suggest any such

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independent grand principle of national policy, and by plac it upon totally different ground.

It proves that the sages who formed and recommended constitution to the favour and adoption of the American peo did not consider the protection of private *rights*, more than protection of personal security, as too insignificant for their rious regard, as was urged with great earnestness in argume In my judgment, the language of the authors of the Federal proves, that they, at least, understood, that the protection personal security, and of private rights, from the despotic a iniquitous operation of retrospective legislation, was, itself, a alone, the grand principle intended to be established. It was principle of the utmost importance to a free people, about t establish a national government, "to establish justice," and, "t secure to themselves and their posterity the blessings of liber ty." This principle is, I think, fully and completely sustained by the construction of the constitution which I have endeavoured to maintain.

In my judgment, the most natural and obvious import of the words themselves, prohibiting the passing of laws "impairing the obligation of contracts;" the natural association of that member of the clause with the two immediately preceding members of the same clause, forbidding the passing of "bills of attainder," and "*ex post facto* laws;" the consecutive order of the several members of the clause; the manifest purposes and objects for which the whole clause was introduced into the constitution, and the cotemporary exposition of the whole clause, all warrant the conclusion, that a State has authority, since the adoption of the constitution, to pass a law, whereby a contract made within the State, after the passage of the law, may be discharged, upon the party obtaining a certificate of discharge, as an insolvent, in the manner prescribed by the law of the State.

Mr. Chief Justice MARSHALL. It is well known that the Court has been divided in opinion on this case. Three Judges, Mr. Justice DUVALL, Mr. Justice STORY, and myself, do not concur in the judgment which has been pronounced. We have taken a different view of the very interesting question which has been discussed with so much talent, as well as labour, at the bar, and I am directed to state the course of reasoning on which we have formed the opinion that the discharge pleaded by the defendant is no bar to the action.

The single question for consideration, is, whether the act of

the State of New-York is consistent with or repugnant to the constitution of the United States?

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This Court has so often expressed the sentiments of profound and respectful reverence with which it approaches questions of this character, as to make it unnecessary now to say more than that, if it be right that the power of preserving the constitution from legislative infraction, should reside any where, it cannot be wrong, it must be right, that those whom the delicate and important duty is conferred should perform it according to their best judgment.

Much, too, has been said concerning the principles of construction which ought to be applied to the constitution of the United States.

On this subject, also, the Court has taken such frequent occasion to declare its opinion, as to make it unnecessary, at least, to enter again into an elaborate discussion of it. To say that the intention of the instrument must prevail; that this intention must be collected from its words; that its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended; that its provisions are neither to be restricted into insignificance, nor extended to objects not comprehended in them, nor contemplated by its framers;—is to repeat what has been already said more at large, and is all that can be necessary.

As preliminary to a more particular investigation of the clause in the constitution, on which the case now under consideration is supposed to depend, it may be proper to inquire how far it is affected by the former decisions of this Court.

In *Sturges* v. *Crowninshield*, it was determined, that an act which discharged the debtor from a contract entered into previous to its passage, was repugnant to the constitution. The reasoning which conducted the Court to that conclusion might, perhaps, conduct it farther; and with that reasoning, (for myself alone this expression is used,) I have never yet seen cause to be dissatisfied. But that decision is not supposed to be a precedent for *Ogden* v. *Saunders*, because the two cases differ from each other in a material fact; and it is a general rule, expressly recognised by the Court in *Sturges* v. *Crowninshield*, that the positive authority of a decision is co-extensive only with the facts on which it is made. In *Sturges* v. *Crowninshield*, the law acted on a contract which was made before its passage; in this case, the contract was entered into after the passage of the law.

In *M'Neill* v. *M'Millan*, the contract, though subsequent to

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the passage of the act, was made in a different State, by pers residing in that State, and consequently, without any view the law, the benefit of which was claimed by the debtor.

The *Farmers and Mechanics' Bank of Pennsylvania*, *Smith*, differed from *Sturges* v. *Crowninshield* only in this, t the plaintiff and defendant were both residents of the State which the law was enacted, and in which it was applied. T Court was of opinion that this difference was unimportant.

It has then been decided, that an act which discharges t debtor from pre-existing contracts is void; and that an act whic operates on future contracts is inapplicable to a contract mad in a different State, at whatever time it may have been entere into.

Neither of these decision comprehends the question now presented to the Court. It is, consequently, open for discussion.

The provision of the constitution is, that "no State shall pass any law" "impairing the obligation of contracts." The plaintiff in error contends that this provision inhibits the passage of retrospective laws only—of such as act on contracts in existence at their passage. The defendant in error maintains that it comprehends all future laws, whether prospective or retrospective, and withdraws every contract from State legislation, the obligation of which has become complete.

That there is an essential difference in principle between laws which act on past, and those which act on future contracts, that those of the first description can seldom be justified, while those of the last are proper subjects of ordinary legislative discretion, must be admitted. A constitutional restriction, therefore, on the power to pass laws of the one class, may very well consist with entire legislative freedom respecting those of the other. Yet, when we consider the nature of our Union; that it is intended to make us, in a great measure, one people, as to commercial objects; that, so far as respects the intercommunication of individuals, the lines of separation between States are, in many respects, obliterated; it would not be matter of surprise, if, on the delicate subject of contracts once formed, the interference of State legislation should be greatly abridged, or entirely forbidden. In the nature of the provision, then, there seems to be nothing which ought to influence our construction of the words; and, in making that construction, the whole clause, which consists of a single sentence, is to be taken together, and the intention is to be collected from the whole.

The first paragraph of the tenth section of the first article,

which comprehends the provision under consideration, contains an enumeration of those cases in which the action of the State legislature is entirely prohibited. The second enumerates those in which the prohibition is modified. The first paragraph, consisting of total prohibitions, comprehends two classes of powers. Those of the first are political and general in their nature, being an exercise of sovereignty without affecting the rights of individuals. These are, the powers "to enter into any treaty, alliance, or confederation; grant letters of marque or reprisal, coin money, emit bills of credit."

The second class of prohibited laws comprehends those whose operation consists in their action on individuals. These are, laws which make any thing but gold and silver coin a tender in payment of debts, bills of attainder, *ex post facto* laws, or laws impairing the obligation of contracts, or which grant any title of nobility.

In all these cases, whether the thing prohibited be the exercise of mere political power, or legislative action on individuals, the prohibition is complete and total. There is no exception from it. Legislation of every description is comprehended within it. A State is as entirely forbidden to pass laws impairing the obligation of contracts, as to make treaties, or coin money. The question recurs, what is a law impairing the obligation of contracts?

In solving this question, all the acumen which controversy can give to the human mind, has been employed in scanning the whole sentence, and every word of it. Arguments have been drawn from the context, and from the particular terms in which the prohibition is expressed, for the purpose, on the one part, of showing its application to all laws which act upon contracts, whether prospectively or retrospectively; and, on the other, of limiting it to laws which act on contracts previously formed.

The first impression which the words make on the mind, would probably be, that the prohibition was intended to be general. A contract is commonly understood to be the agreement of the parties; and, if it be not illegal, to bind them to the extent of their stipulations. It requires reflection, it requires some intellectual effort, to efface this impression, and to come to the conclusion, that the words contract and obligation, as used in the constitution, are not used in this sense. If, however, the result of this mental effort, fairly made, be the correction of this impression, it ought to be corrected.

So much of this prohibition as restrains the power of the States to punish offenders in criminal cases, the prohibition to

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pass bills of attainder and *ex post facto* laws, is, in its ve terms, confined to pre-existing cases. A bill of attainder can only for crimes already committed; and a law is not *ex p facto*, unless it looks back to an act done before its passag Language is incapable of expressing, in plainer terms, that t mind of the Convention was directed to retroactive legislatio The thing forbidden is retroaction. But that part of the claus which relates to the civil transactions of individuals, is expre sed in more general terms; in terms which comprehend, in thei ordinary signification, cases which occur after, as well as thos which occur before, the passage of the act. It forbids a Stat to make any thing but gold and silver coin a tender in payment of debts, or to pass any law impairing the obligation of contracts. These prohibitions relate to kindred subjects. They contemplate legislative interference with private rights, and restrain that interference. In construing that part of the clause which respects tender laws, a distinction has never been attempted between debts existing at the time the law may be passed, and debts afterwards created. The prohibition has been considered as total; and yet the difference in principle between making property a tender in payment of debts, contracted after the passage of the act, and discharging those debts without payment, or by the surrender of property, between an absolute right to tender in payment, and a contingent right to tender in payment, or in discharge of the debt, is not clearly discernible. Nor is the difference in language so obvious, as to denote plainly a difference of intention in the framers of the instrument. "No State shall make any thing but gold and silver coin a tender in payment of debts." Does the word "debts" mean, generally, those due when the law applies to the case, or is it limited to debts due at the passage of the act? The same train of reasoning which would confine the subsequent words to contracts existing at the passage of the law, would go far in confining these words to debts existing at that time. Yet, this distinction has never, we believe, occurred to any person. How soon it may occur is not for us to determine. We think it would unquestionably, defeat the object of the clause.

The counsel for the plaintiff insist, that the word "impairing," in the present tense, limits the signification of the provision to the operation of the act at the time of its passage; that no law can be accurately said to impair the obligation of contracts, unless the contracts exist at the time. The law cannot impair what does not exist. It cannot act on nonentities.

There might be weight in this argument, if the prohibited

laws were such only as operated of themselves, and immediately on the contract. But insolvent laws are to operate on a future, contingent, unforeseen event. The time to which the word "impairing" applies, is not the time of the passage of the act, but of its action on the contract. That is, the time present in contemplation of the prohibition. The law, at its passage, has no effect whatever on the contract. Thus, if a note be given in New-York for the payment of money, and the debtor removes out of that State into Connecticut, and becomes insolvent, it is not pretended that this debt can be discharged by the law of New-York. Consequently, that law did not operate on the contract at its formation. When, then, does its operation commence? We answer, when it is applied to the contract. Then, if ever, and not till then, it acts on the contract, and becomes a law impairing its obligation. Were its constitutionality, with respect to previous contracts, to be admitted, it would not impair their obligation until an insolvency should take place, and a certificate of discharge be granted. Till these events occur, its impairing faculty is suspended. A law, then, of this description, if it derogates from the obligation of a contract, when applied to it, is, grammatically speaking, as much a law impairing that obligation, though made previous to its formation, as if made subsequently.

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A question of more difficulty has been pressed with great earnestness. It is, what is the original obligation of a contract, made after the passage of such an act as the insolvent law of New-York? Is it unconditional to perform the very thing stipulated, or is the condition implied, that, in the event of insolvency, the contract shall be satisfied by the surrender of property? The original obligation, whatever that may be, must be preserved by the constitution. Any law which lessens, must impair it.

All admit, that the constitution refers to, and preserves, the legal, not the moral obligation of a contract. Obligations purely moral, are to be enforced by the operation of internal and invisible agents, not by the agency of human laws. The restraints imposed on States by the constitution, are intended for those objects which would, if not restrained, be the subject of State legislation. What, then, was the original legal obligation of the contract now under the consideration of the Court?

The plaintiff insists, that the law enters into the contract so completely as to become a constituent part of it. That it is to be construed as if it contained an express stipulation to be discharged, should the debtor become insolvent, by the surrender of

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all his property for the benefit of his creditors, in pursuance the act of the legislature.

This is, unquestionably, pressing the argument very far; a the establishment of the principle leads inevitably to con quences which would affect society deeply and seriously.

Had an express condition been inserted in the contract, d claring that the debtor might be discharged from it at any tin by surrendering all his property to his creditors, this conditi would have bound the creditor. It would have constituted th obligation of his contract; and a legislative act annulling th condition would impair the contract. Such an act would, as i admitted by all, be unconstitutional, because it operates on pre existing agreements. If a law authorizing debtors to discharg themselves from their debts by surrendering their property, en ters into the contract, and forms a part of it, if it is equivalen to a stipulation between the parties, no repeal of the law can affect contracts made during its existence. The effort to give it that effect would impair their obligation. The counsel for the plaintiff perceive, and avow this consequence, in effect, when they contend, that to deny the operation of the law on the contract under consideration, is to impair its obligation. Are gentlemen prepared to say, that an insolvent law, once enacted, must, to a considerable extent, be permanent? That the legislature is incapable of varying it so far as respects existing contracts?

So, too, if one of the conditions of an obligation for the payment of money be, that on the insolvency of the obligor, or on any event agreed on by the parties, he should be at liberty to discharge it by the tender of all, or part of his property, no question could exist respecting the validity of the contract, or respecting its security from legislative interference. If it should be determined, that a law authorizing the same tender, on the same contingency, enters into and forms a part of the contract, then, a tender law, though expressly forbidden, with an obvious view to its prospective, as well as retrospective operation, would, by becoming the contract of the parties, subject all contracts made after its passage to its control. If it be said, that such a law would be obviously unconstitutional and void, and therefore, could not be a constituent part of the contract, we answer, that if the insolvent law be unconstitutional, it is equally void, and equally incapable of becoming, by mere implication, a part of the contract. The plainness of the repugnancy does not change the question. That may be very clear to one intellect, which is far from being so to another. The law now

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security. It is reasonable that he should
the law presumes that he did stipu-

ass of human transactions depends upon implied
on contracts which are not written, but which
the acts of the parties. In such cases, the parties
to have made those stipulations, which, as honest,
ought to have made. When the law
made these stipulations, it does not vary
duce new terms into it, but declares that
acts, unexplained by compact, impose certain duties,
the parties had stipulated for their performance. The
distinction between this and the introduction of a new
contract drawn out in writing, in which the
expressed every thing that is to be done by either.
banks, by which days of grace are allowed on
and negotiable in bank, is of the same charac-
grace, from their very term, originate partly in
, and partly in the indulgence of the creditor. By
the note, the debtor has to the last hour of the day
which it becomes payable, to comply with it; and it would
be inconvenient to take any steps after the close of day.
often convenient to postpone subsequent proceedings till the
day. Usage has extended this time of grace generally to
days, and in some banks to four. This usuage is made a
of the contract, not by the interference of the legislature,
by the act of the parties. The case cited from 9 *Wheat.*
581. is a note discounted in bank. In all such cases the
receives, and the maker of the note pays, interest for the
of grace. This would be illegal and usurious, if the mo-
was not lent for these additional days. The extent of the
therefore, is regulated by the act of the parties, and this
of the contract is founded on their act. Since, by contract,
maker is not liable for his note until the days of grace are
ed, he has not broken his contract until they expire. The
of giving notice to the endorser of his failure, does not
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n when the event has happened.

he case of the *Bank of Columbia* v. *Oakley*, (4 *Wheat. Rep.*
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The failure to pay, according to stipulation, is a breach of the contract, and the means used to enforce it constitute the remedy which society affords the injured party. If the obligation contains a penalty, this remedy is universally so regulated that the judgment shall be entered for the penalty, to be discharged by the payment of the principal and interest. But the case on which the counsel has reasoned is a single bill. In this case, the party who has broken his contract is liable for damages. The proceeding to obtain those damages is as much a part of the remedy as the proceeding to obtain the debt. They are claimed in the same declaration, and as being distinct from each other. The damages must be assessed by a jury, whereas, if interest formed a part of the debt, it would be recovered as part of it. The declaration would claim it as a part of the debt; and yet, if a suitor were to declare on such a bond as containing this new term for the payment of interest, he would not be permitted to give a bond in evidence in which this supposed term was not written. Any law regulating the proceedings of Courts on this subject, would be a law regulating the remedy.

The liability of the drawer of a bill of exchange, stands upon the same principle with every other implied contract. He has received the money of the person in whose favour the bill is drawn, and promises that it shall be returned by the drawee. If the drawee fail to pay the bill, then the promise of the drawer is broken, and for this breach of contract he is liable. The same principle applies to the endorser. His contract is not written, but his name is evidence of his promise that the bill shall be paid, and of his having received value for it. He is, in effect, a new drawer, and has made a new contract. The law does not require that this contract shall be in writing; and, in determining what evidence shall be sufficient to prove it, does not introduce new conditions not actually made by the parties. The same reasoning applies to the principle which requires notice. The original contract is not written at large. It is founded on the acts of the parties, and its extent is measured by those acts. A. drawns on B. in favour of C. for value received. The bill is evidence that he has received value, and has promised that it shall be paid. He has funds in the hands of the drawer, and has a right to expect that his promise will be performed. He has, also, a right to expect notice of its non-performance, because his conduct may be materially influenced by this failure of the drawee. He ought to have notice that *his* bill is disgraced, because this notice enables him to take

measures for his own security. It is reasonable that he should stipulate for this notice, and the law presumes that he did stipulate for it.

A great mass of human transactions depends upon implied contracts; upon contracts which are not written, but which grow out of the acts of the parties. In such cases, the parties are supposed to have made those stipulations, which, as honest, fair, and just men, they ought to have made. When the law assumes that they have made these stipulations, it does not vary their contract, or introduce new terms into it, but declares that certain acts, unexplained by compact, impose certain duties, and that the parties had stipulated for their performance. The difference is obvious between this and the introduction of a new condition into a contract drawn out in writing, in which the parties have expressed every thing that is to be done by either.

The usage of banks, by which days of grace are allowed on notes payable and negotiable in bank, is of the same character. Days of grace, from their very term, originate partly in convenience, and partly in the indulgence of the creditor. By the terms of the note, the debtor has to the last hour of the day on which it becomes payable, to comply with it; and it would often be inconvenient to take any steps after the close of day. It is often convenient to postpone subsequent proceedings till the next day. Usage has extended this time of grace generally to three days, and in some banks to four. This usuage is made a part of the contract, not by the interference of the legislature, but by the act of the parties. The case cited from 9 *Wheat. Rep.* 581. is a note discounted in bank. In all such cases the bank receives, and the maker of the note pays, interest for the days of grace. This would be illegal and usurious, if the money was not lent for these additional days. The extent of the loan, therefore, is regulated by the act of the parties, and this part of the contract is founded on their act. Since, by contract, the maker is not liable for his note until the days of grace are expired, he has not broken his contract until they expire. The duty of giving notice to the endorser of his failure, does not arise, until the failure has taken place; and, consequently, the promise of the bank to give such notice is performed, if it be given when the event has happened.

The case of the *Bank of Columbia* v. *Oakley*, (4 *Wheat. Rep.* 235.) was one in which the legislature had given a summary remedy to the bank for a broken contract, and had placed that remedy in the hands of the bank itself. The case did not turn on the question whether the law of Maryland was introduced into

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the contract, but whether a party might not, by his own conduct, renounce his claim to the trial by jury in a particular case. The Court likened it to submissions to arbitration, and to stipulation and forthcoming bonds. The principle settled in that case is, that a party may renounce a benefit, and that *Oakley*, had exercised this right.

The cases from *Strange* and *East* turn upon a principle, which is generally recognized, but which is entirely distinct from that which they are cited to support. It is, that a man who is discharged by the tribunals of his own country, acting under its laws, may plead that discharge in any other country. The principle is, that laws act upon a contract, not that they enter into it, and become a stipulation of the parties. Society affords a remedy for breaches of contract. If that remedy has been applied, the claim to it is extinguished. The external action of law upon contracts, by administering the remedy for their breach, or otherwise, is the usual exercise of legislative power. The interference with those contracts, by introducing conditions into them not agreed to by the parties, would be a very unusual and a very extraordinary exercise of the legislative power, which ought not to be gratuitously attributed to laws that do not profess to claim it. If the law becomes a part of the contract, change of place would not expunge the condition. A contract made in New-York would be the same in any other State as in New-York, and would still retain the stipulation originally introduced into it, that the debtor should be discharged by the surrender of his estate.

It is not, we think, true, that contracts are entered into in contemplation of the insolvency of the obligor. They are framed with the expectation that they will be literallly performed. Insolvency is undoubtedly a casualty which is possible, but is never expected. In the ordinary course of human transactions, if even suspected, provision is made for it, by taking security against it. When it comes unlooked for, it would be entirely contrary to reason to consider it as a part of the contract.

We have, then, no hesitation in saying that, however law may act upon contracts, it does not enter into them, and become a part of the agreement. The effect of such a principle would be a mischievous abridgment of legislative power over subjects within the proper jurisdiction of States, by arresting their power to repeal or modify such laws with respect to existing contracts.

But although the argument is not sustainable in this form, it assumes no other, in which it is more plausible. Contract, it is

said, being the creature of society, derives its obligation from the law; and, although the law may not enter into the agreement so as to form a constituent part of it, still it acts externally upon the contract, and determines how far the principle of coercion shall be applied to it, and this being universally understood, no individual can complain justly of its application to himself, in a case where it was known when the contract was formed.

This argument has been illustrated by references to the statutes of frauds, of usury, and of limitations. The construction of the words in the constitution, respecting contracts, for which the defendants contend, would, it has been said, withdraw all these subjects from State legislation. The acknowledgement, that they remain within it, is urged as an admission, that contract is not withdrawn by the constitution, but remains under State control, subject to this restriction only, that no law shall be passed impairing the obligation of contracts in existence at its passage.

The defendants maintain that an error lies at the very foundation of this argument. It assumes that contract is the mere creature of society, and derives all its obligation from human legislation. That it is not the stipulation an individual makes which binds him, but some declaration of the supreme power of a State to which he belongs, that he shall perform what he has undertaken to perform. That though this original declaration may be lost in remote antiquity, it must be presumed as the origin of the obligation of contracts. This postulate the defendants deny, and, we think, with great reason.

It is an argument of no inconsiderable weight against it, that we find no trace of such an enactment. So far back as human research carries us, we find the judicial power as a part of the executive, administering justice by the application of remedies to violated rights, or broken contracts. We find that power applying these remedies on the idea of a pre-existing obligation on every man to do what he has promised on consideration to do; that the breach of this obligation is an injury for which the injured party has a just claim to compensation, and that society ought to afford him a remedy for that injury. We find allusions to the mode of acquiring property, but we find no allusion, from the earliest time, to any supposed act of the governing power giving obligation to contracts. On the contrary the proceedings respecting them of which we know any thing, evince the idea of a pre-existing intrinsic obligation which human law enforces.

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If, on tracing the right to contract, and the obligations created by contract, to their source, we find them to exist anterior to and independent of society, we may reasonably conclude that those original and pre-existing principles are, like many other natural rights, brought with man into society; and, although they may be controlled, are not given by human legislation.

In the rudest state of nature a man governs himself, and labours for his own purposes. That which he acquires is his own, at least while in his possession, and he may transfer it to another. This transfer passes his right to that other. Hence the right to barter. One man may have acquired more skins than are necessary for his protection from the cold; another more food than is necessary for his immediate use. They agree each to supply the wants of the other from his surplus. Is this contract without obligation? If one of them, having received and eaten the food he needed, refuses to deliver the skin, may not the other rightfully compel him to deliver it? Or two persons agree to unite their strength and skill to hunt together for their mutual advantage, engaging to divide the animal they shall master. Can one of them rightfully take the whole? or should he attempt it, may not the other force him to a division? If the answer to these questions must affirm the duty of keeping faith between these parties, and the right to enforce it if violated, the answer admits the obligation of contracts, because, upon that obligation depends the right to enforce them. Superior strength may give the power, but cannot give the right. The rightfulness of coercion must depend on the pre-existing obligation to do that for which compulsion is used. It is no objection to the principle, that the injured party may be the weakest. In society, the wrong-doer may be too powerful for the law. He may deride its coercive power, yet his contracts are obligatory; and, if society acquire the power of coercion, that power will be applied without previously enacting that his contract is obligatory.

Independent nations are individuals in a state of nature. Whence is derived the obligation of their contracts? They admit the existence of no superior legislative power which is to give them validity, yet their validity is acknowledged by all. If one of these contracts be broken, all admit the right of the injured party to demand reparation for the injury, and to enforce that reparation if it be withheld. He may not have the power to enforce it, but the whole civilized world concurs in saying, that the power, if possessed, is rightfully used.

In a state of nature, these individuals may contract, their con-

tracts are obligatory, and force may rightfully be employed to coerce the party who has broken his engagement.

What is the effect of society upon these rights? When men unite together and form a government, do they surrender their right to contract, as well as their right to enforce the observance of contracts? For what purpose should they make this surrender? Government cannot exercise this power for individuals. It is better that they should exercise it for themselves. For what purpose, then, should the surrender be made? It can only be, that government may give it back again. As we have no evidence of the surrender, or of the restoration of the right; as this operation of surrender and restoration would be an idle and useless ceremony, the rational inference seems to be, that neither has ever been made; that individuals do not derive from government their right to contract, but bring that right with them into society; that obligation is not conferred on contracts by positive law, but is intrinsic, and is conferred by the act of the parties. This results from the right which every man retains to acquire property, to dispose of that property according to his own judgment, and to pledge himself for a future act. These rights are not given by society, but are brought into it. The right of coercion is necessarily surrendered to government, and this surrender imposes on government the correlative duty of furnishing a remedy. The right to regulate contracts, to prescribe rules by which they shall be evidenced, to prohibit such as may be deemed mischievous, is unquestionable, and has been universally exercised. So far as this power has restrained the original right of individuals to bind themselves by contract, it is restrained; but beyond these actual restraints the original power remains unimpaired.

This reasoning is, undoubtedly, much strengthened by the authority of those writers on natural and national law, whose opinions have been viewed with profound respect by the wisest men of the present, and of past ages.

Supposing the obligation of the contract to be derived from the agreement of the parties, we will inquire how far law acts externally on it, and may control that obligation. That law may have, on future contracts, all the effect which the counsel for the plaintiff in error claim, will not be denied. That it is capable of discharging the debtor under the circumstances, and on the conditions prescribed in the statute which has been pleaded in this case, will not be controverted. But as this is an operation which was not intended by the parties, nor contemplated by them, the particular act can be entitled to this operation only when it has the full force of law. A law may determine the

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obligation of a contract on the happening of a contingency, be cause it is the law: If it be not the law, it cannot have this effect. When its existence as law is denied, that existence cannot be proved by showing what are the qualities of a law. Law has been defined by a writer, whose definitions especially have been the theme of almost universal panegyric, "to be a rule of civil conduct prescribed by the supreme power in a State." In our system, the legislature of a State is the supreme power, in all cases where its action is not restrained by the constitution of the United States. Where it is so restrained, the legislature ceases to be the supreme power, and its acts are not law. It is, then, begging the question to say, that, because contracts may be discharged by a law previously enacted, this contract may be discharged by this act of the legislature of New-York; for the question returns upon us, in this act a law. Is it consistent with, or repugnant to, the constitution of the United States? This question is to be solved only by the coustitution itself.

In examining it, we readily admit, that the whole subject of contracts is under the control of society, and that all the power of society over it resides in the State legislatures, except in those special cases where restraint is imposed by the constitution of the United States. The particular restraint now under consideration is on the power to impair the obligation of contracts. The extent of this restraint cannot be ascertained by showing that the legislature may prescribe the circumstances, on which the original validity of a contract shall be made to depend. If the legislative will be, that certain agreements shall be in writing, that they shall be sealed, that they shall be attested by a certain number of witnesses, that they shall be recorded, or that they shall assume any prescribed form before they become obligatory, all these are regulations which society may rightfully make, and which do not come within the restrictions of the constitution, because they do not *impair* the obligation of the contract. The obligation must exist before it can be impaired; and a prohibition to impair it, when made, does not imply an inability to prescribe those circumstances which shall create its obligation. The Statutes of frauds, therefore, which have been enacted in several States, and which are acknowledged to flow from the proper exercise of State sovereignty, prescribe regulations which must precede the obligation of the contract, and consequently, cannot impair that obligation. Acts of this description, therefore, are most clearly not within the prohibition of the constitution.

The acts against usury are of the same character. They de-

clare the contract to be void in the beginning. They deny that the instrument ever became a contract. They deny it all original obligation; and cannot impair that which never came into existence.

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Acts of limitations approach more nearly to the subject of consideration, but are not identified with it. They defeat a contract once obligatory, and may, therefore, be supposed to partake of the character of laws which impair its obligation. But a practical view of the subject will show us that the two laws stand upon distinct principles.

In the case of *Sturges* v. *Crowninshield*, it was observed by the Court, that these statutes relate only to the remedies, which are furnished in the Courts; and their language is generally confined to the remedy. They do not purport to dispense with the performance of a contract, but proceed on the presumption that a certain length of time, unexplained by circumstances, is reasonable evidence of a performance. It is on this idea alone that it is possible to sustain the decision, that a bare acknowledgement of the debt, unaccompanied with any new promise, shall remove the bar created by the act. It would be a mischief not to be tolerated, if contracts might be set up at any distance of time, when the evidence of payment might be lost, and the estates of the dead, or even of the living, be subjected to these stale obligations. The principle is, without the aid of a statute, adopted by the Courts as a rule of justice. The legislature has enacted no statute of limitations as a bar to suits on sealed instruments. Yet twenty years of unexplained silence on the part of the creditor is evidence of payment. On parol contracts, or on written contracts not under seal, which are considered in a less solemn point of view than sealed instruments, the legislature has supposed that a shorter time might amount to evidence of performance, and has so enacted. All have acquiesced in these enactments, but have never considered them as being of that class of laws which impair the obligation of contracts. In prescribing the evidence which shall be received in its Courts, and the effect of that evidence, the State is exercising its acknowledged powers. It is likewise in the exercise of its legitimate powers, when it is regulating the remedy and mode of proceeding in its Courts.

The counsel for the plaintiff in error insist, that the right to regulate the remedy and to modify the obligation of the contract are the same; that obligation and remedy are identical, that they are synonymous—two words conveying the same idea.

The answer given to this proposition by the defendant's

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counsel seems to be conclusive. They originate at differe times. The obligation to perform is coeval with the undertal ing to perform; it originates with the contract itself, and operat anterior to the time of performance. The remedy acts upon broken contract, and enforces a pre-existing obligation.

If there be any thing in the observations made in a precedin part of this opinion respecting the source from which contracts derive their obligation, the proposition we are now considering cannot be true. It was shown, we think, satisfactorily, that the right to contract is the attribute of a free agent, and that he may rightfully coerce performance from another free agent who violates his faith. Contracts have, consequently an intrinsic obligation. When men come into society, they can no longer exercise this original and natural right of coercion. It would be incompatible with general peace, and is, therefore, surrendered. Society prohibits the use of private individual coercion, and gives in its place a more safe and a more certain remedy. But the right to contract is not surrendered with the right to coerce performance. It is still incident to that degree of free agency which the laws leave to every individual, and the obligation of the contract is a necessary consequence of the right to make it. Laws regulate this right, but, where not regulated, it is retained in its original extent. Obligation and remedy, then, are not identical; they originate at different times, and are derived from different sources.

But, although the identity of obligation and remedy be disproved, it may be, and has been urged, that they are precisely commensurate with each other, and are such sympathetic essences, if the expression may be allowed, that the action of law upon the remedy is immediately felt by the obligation—that they live, languish, and die together. The use made of this argument is to show the absurdity and self-contradiction of the construction which maintains the inviolability of obligation, while it leaves the remedy to the State governments.

We do not perceive this absurdity or self-contradiction.

Our country exhibits the extraordinary spectacle of distinct, and, in many respects, independent governments over the same territory and the same people. The local governments are restrained from impairing the obligation of contracts, but they furnish the remedy to enforce them, and administer that remedy in tribunals constituted by themselves. It has been shown that the obligation is distinct from the remedy, and, it would seem to follow, that law might act on the remedy without acting on the obligation. To afford a remedy is certainly the high duty

of those who govern to those who are governed. A failure in the performance of this duty subjects the government to the just reproach of the world. But the constitution has not undertaken to enforce its performance. That instrument treats the States with the respect which is due to intelligent beings, understanding their duties, and willing to perform them; not as insane beings, who must be compelled to act for self-preservation. Its language is the language of restraint, not of coercion. It prohibits the States from passing any law impairing the obligation of contracts; it does not enjoin them to enforce contracts. Should a State be sufficiently insane to shut up or abolish its Courts, and thereby withhold all remedy, would this annihilation of remedy annihilate the obligation also of contracts? We know it would not. If the debtor should come within the jurisdiction of any Court of another state, the remedy would be immediately applied, and the inherent obligation of the contract enforced. This cannot be ascribed to a renewal of the obligation; for passing the line of a State cannot re-create an obligation which was extinguished. It must be the original obligation derived from the agreement of the parties, and which exists unimpaired though the remedy was withdrawn.

But, we are told, that the power of the State over the remedy may be used to the destruction of all beneficial results from the right; and hence it is inferred, that the construction which maintains the inviolability of the obligation, must be extended to the power of regulating the remedy.

The difficulty which this view of the subject presents, does not proceed from the identity or connexion of right and remedy, but from the existence of distinct governments acting on kindred subjects. The constitution contemplates restraint as to the obligation of contracts; not as to the application of remedy. If this restraint affects a power which the constitution did not mean to touch, it can only be when that power is used as an instrument of hostility to invade the inviolability of contract, which which is placed beyond its reach. A State may use many of its acknowledged powers in such manner as to come in conflict with the provisions of the constitution. Thus the power over its domestic police, the power to regulate commerce purely internal, may be so exercised as to interfere with regulations of commerce with foreign nations, or between the States. In such cases, the power which is supreme must control that which is not supreme, when they come in conflict. But this principle does not involve any self-contradiction, or deny the existence of the several powers in the respective governments. So, if a

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State shall not merely modify, or withhold a particular remed but shall apply it in such manner as to extinguish the obligati without performance, it would be an abuse of power whic could scarcely be misunderstood, but which would not prove th remedy could not be regulated without regulating obligation.

The counsel for the plaintiff in error put a case of more diffi culty, and urge it as a conclusive argument against the existenc of a distinct line dividing obligation from remedy. It is thi The law affords remedy by giving execution against the perso or the property, or both. The same power which can with draw the remedy against the person, can withdraw that against the property, or that against both, and thus effectually defeat the obligation. The constitution, we are told, deals not with form, but with substance; and cannot be presumed, if it designed to protect the obligation of contracts from State legislation, to have left it thus obviously exposed to destruction.

The answer is, that if the law goes farther, and annuls the obligation without affording the remedy which satisfies it, if its action on the remedy be such as palpably to impair the obligation of the contract, the very case arises which we suppose to be within the constitution. If it leaves the obligation untouched, but withholds the remedy, or affords one which is merely nominal, it is like all other cases of misgovernment, and leaves the debtor still liable to his creditor, should he be found, or should his property be found, where the laws afford a remedy. If that high sense of duty which men selected for the government of their fellow citizens must be supposed to feel, furnishes no security against a course of legislation which must end in self-destruction; if the solemn oath taken by every member, to support the constitution of the United States, furnishes no security against intentional attempts to violate its spirit while evading its letter;—the question how far the constitution interposes a shield for the protection of an injured individual, who demands from a Court of justice that remedy which every government ought to afford, will depend on the law itself which shall be brought under consideration. The anticipation of such a case would be unnecessarily disrespectful, and an opinion on it would be, at least, premature. But, however the question might be decided, should it be even determined that such a law would be a successful evasion of the constitution, it does not follow, that an act which operates directly on the contract after it is made, is not within the restriction imposed on the States by that instrument. The validity of a law acting directly on the obligation, is not

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proved by showing that the constitution has provided no means for compelling the States to enforce it.

We perceive, then, no reason for the opinion, that the prohibition "to pass any law impairing the obligation of contracts," is incompatible with the fair exercise of that discretion, which the State legislatures possess in common with all governments, to regulate the remedies afforded by their own Courts. We think, that obligation and remedy are distinguishable from each other. That the first is created by the act of the parties, the last is afforded by government. The words of the restriction we have been considering, countenance, we think, this idea. No State shall "pass any law impairing the obligation of contracts." These words seem to us to import, that the obligation is intrinsic, that it is created by the contract itself, not that it is dependent on the laws made to enforce it. When we advert to the course of reading generally pursued by American statesmen in early life, we must suppose, that the framers of our constitution were intimately acquainted with the writings of those wise and learned men, whose treatises on the laws of nature and nations have guided public opinion on the subjects of obligation and contract. If we turn to those treatises, we find them to concur in the declaration, that contracts possess an original intrinsic obligation, derived from the acts of free agents, and not given by government. We must suppose, that the framers of our constitution took the same view of the subject, and the language they have used confirms this opinion.

The propositions we have endeavoured to maintain, of the truth of which we are ourselves convinced, are these:

That the words of the clause in the constitution which we are considering, taken in their natural and obvious sense, admit of a prospective, as well as of a retrospective, operation.

That an act of the legislature does not enter into the contract, and become one of the conditions stipulated by the parties; nor does it act externally on the agreement, unless it have the full force of law.

That contracts derive their obligation from the act of the parties, not from the grant of government; and that the right of government to regulate the manner in which they shall be formed, or to prohibit such as may be against the policy of the State, is entirely consistent with their inviolability after they have been formed.

That the obligation of a contract is not identified with the means which government may furnish to enforce it; and that a prohibition to pass any law impairing it, does not imply a

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prohibition to vary the remedy; nor does a power to vary the remedy, imply a power to imply the obligation derived from the act of the parties.

We cannot look back to the history of the times when the august spectacle was exhibited of the assemblage of a whole people by their representatives in Convention, in order to unite thirteen independent sovereignties under one government, so far as might be necessary for the purposes of union, without being sensible of the great importance which was at that time attached to the tenth section of the first article. The power of changing the relative situation of debtor and creditor, of interfering with contracts, a power which comes home to every man, touches the interest of all, and controls the conduct of every individual in those things which he supposes to be proper for his own exclusive management, had been used to such an excess by the State legislatures, as to break in upon the ordinary intercourse of society, and destroy all confidence between man and man. The mischief had become so great, so alarming, as not only to impair commercial intercourse, and threaten the existence of credit, but to sap the morals of the people, and destroy the sanctity of private faith. To guard against the continuance of the evil was an object of deep interest with all the truly wise, as well as the virtuous, of this great community, and was one of the important benefits expected from a reform of the government.

To impose restraints on State legislation as respected this delicate and interesting subject, was thought necessary by all those patriots who could take an enlightened and comprehensive view of our situation; and the principle obtained an early admission into the various schemes of government which were submitted to the Convention. In framing an instrument, which was intended to be perpetual, the presumption is strong, that every important principle introduced into it is intended to be perpetual also; that a principle expressed in terms to operate in all future time, is intended so to operate. But if the construction for which the plaintiff's counsel contend be the true one, the constitution will have imposed a restriction in language indicating perpetuity, which every State in the Union may elude at pleasure. The obligation of contracts in force, at any given time, is but of short duration; and, if the inhibition be of retrospective laws only, a very short lapse of time will remove every subject on which the act is forbidden to operate, and make this provision of the constitution so far useless. Instead of introducing a great principle, prohibiting all laws of this obnoxious

character, the constitution will only suspend their operation for a moment, or except from it pre-existing cases. The object would scarcely seem to be of sufficient importance to have found a place in that instrument.

This construction would change the character of the provision, and convert an inhibition to pass laws impairing the obligation of contracts, into an inhibition to pass retrospective laws. Had this been the intention of the Convention, is it not reasonable to believe that it would have been so expressed? Had the intention been to confine the restriction to laws which were retrospective in their operation, language could have been found, and would have been used, to convey this idea. The very word would have occurred to the framers of the instrument, and we should have probably found it in the clause. Instead of the general prohibition to pass any "law impairing the obligation of contracts," the prohibition would have been to the passage of any retrospective law. Or, if the intention had been not to embrace all retrospective laws, but those only which related to contracts, still the word would have been introduced, and the State legislatures would have been forbidden "to pass any *retrospective* law impairing the obligation of contracts," or "to pass any law impairing the obligation of contracts previously made." Words which directly and plainly express the cardinal intent, always present themselves to those who are preparing an important instrument, and will always be used by them. Undoubtedly there is an imperfection in human language, which often exposes the same sentence to different constructions. But it is rare, indeed, for a person of clear and distinct perceptions, intending to convey one principal idea, so to express himself as to leave any doubt respecting that idea. It may be uncertain whether his words comprehend other things not immediately in his mind; but it can seldom be uncertain whether he intends the particular thing to which his mind is specially directed. If the mind of the Convention, in framing this prohibition, had been directed, not generally to the operation of laws upon the obligation of contracts, but particularly to their retrospective operation, it is scarcely conceivable that some word would not have been used indicating this idea. In instruments prepared on great consideration, general terms, comprehending a whole subject, are seldom employed to designate a particular, we might say, a minute portion of that subject. The general language of the clause is such as might be suggested by a general intent to prohibit State legislation on the subject to which that language is applied—the obligation of contracts; not such as would be sug-

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gested by a particular intent to prohibit retrospective legislation.

It is also worthy of consideration, that those laws which have effected all that mischief the constitution intended to prevent were prospective as well as retrospective, in their operation. They embraced future contracts, as well as those previously formed. There is the less reason for imputing to the Convention an intention, not manifested by their language, to confine a restriction intended to guard against the recurrence of those mischiefs, to retrospective legislation. For these reasons, we are of opinion, that, on this point, the District Court of Louisiana has decided rightly.

March 6.

Judgment having been entered in favour of the validity of a certificate of discharge under the State laws in those cases, (argued in connexion with *Ogden* v. *Saunders*,) where the contract was made between citizens of the State under whose law the discharge was obtained, and in whose Courts the certificate was pleaded, the cause was further argued by the same counsel, upon the points reserved, as to the effect of such a discharge in respect to a contract made with a citizen of another State, and where the certificate was pleaded in the Courts of another State, or of the United States.

To render the judgment which was finally pronounced in the cause intelligible, it is necessary to state, that in addition to the plea of the certificate of discharge under the insolvent law of of the State of New York, of 1801, the defendant below, Ogden, pleaded the statute of limitations (of New York,) *non assumpsit infra sex annos.*

To this plea, the plaintiff below, Saunders, replied, that previous to the running of the statute, to wit, in April, 1810, the defendant, Ogden, removed from the State of New-York to New-Orleans, in the State of Louisiana, where he continued to reside until the commencement of this suit.

The jury found the facts of the drawing and acceptance of the bills, of the discharge under the insolvent law of New-York, and of the defendant's removing to Louisiana at the time stated in the plaintiff's replication, in the form of what was probably intended to be a special verdict, submitting the law to the Court: "If the law be for the plaintiff, then they find for the plaintiff the amount of the several acceptances, with the interest and costs; but if the law on the said facts be for the defendant, then the jury find for the defendant, with costs."

A judgment was rendered by the Court below upon this ver-

dict. And the cause being brought by writ of error before this Court, among the errors assigned was the following: "That the judgment of the Court is for a greater sum than is found by the jury; the whole amount of the bills set forth in the petition being 2,183 dollars, amounting, with interest from the time of the judicial demand, to 2,652 dollars and 34 cents. Whereas the judgment is for the sum of 4,017 dollars, 64 cents, damages," &c. 1827. Ogden v. Saunders.

Mr. Justice JOHNSON. I am instructed by the majority of the Court finally to dispose of this cause. The present majority is not the same which determined the general question on the constitutionality of State insolvent laws, with reference to the violation of the obligation of contracts. I now stand united with the minority on the former question, and, therefore, feel it due to myself and the community to maintain my consistency. March 13.

The question now to be considered is, whether a discharge of a debtor under a State insolvent law, would be valid against a creditor or citizen of another State, who has never voluntarily subjected himself to the State laws, otherwise than by the origin of his contract.

As between its own citizens, whatever be the origin of the contract, there is now no question to be made on the effect of such a discharge; nor is it to be questioned, that a discharge not valid under the constitution in the Courts of the United States, is equally invalid in the State Courts. The question to be considered goes to the invalidity of the discharge altogether, and, therefore, steers clear of that provision in the constitution which purports to give validity in every State to the records, judicial proceedings, and so forth, of each State.

The question now to be considered, was anticipated in the case of *Sturges* v. *Crowninshield*, when the Court, in the close of the opinion delivered, declared, that it means to confine its views to the case then under consideration, and not to commit itself as to those in which the interests and rights of a citizen of another State are implicated.

The question is one partly international, partly constitutional. My opinion on the subject is briefly this: that the provision in the constitution which gives the power to the general government to establish tribunals of its own in every State, in order that the citizens of other States or sovereignties might therein prosecute their rights under the jurisdiction of the United States, had for its object an harmonious distribution of justice throughout the Union; to confine the States, in the exercise of

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their judicial sovereignty, to cases between their own citizens to prevent, in fact, the exercise of that very power over the rights of citizens, of other States, which the origin of the contract might be supposed to give to each State; and thus, to obviate that *conflictus legum*, which has employed the pens of *Huberus* and various others, and which any one who studies the subject will plainly perceive, it is infinitely more easy to prevent than to adjust.

These conflicts of power and right necessarily arise only after contracts are entered into. Contracts, then, become the appropriate subjects of judicial cognizance; and if the just claims which they give rise to, are violated by arbitrary laws, or if the course of distributive justice be turned aside, or obstructed by legislative interference, it becomes a subject of jealousy, irritation, and national complaint or retaliation.

It is not unimportant to observe, that the constitution was adopted at the very period when the Courts of Great Britain were engaged in adjusting the conflicts of right which arose upon their own bankrupt law, among the subjects of that crown in the several dominions of Scotland, Ireland, and the West Indies. The first case we have on the effect of foreign discharges, that of *Ballantine* v. *Golding*, occurred in 1783, and the law could hardly be held settled before the case of *Hunter* v. *Potts*, which was decided in 1791.

Any one who will take the trouble to investigate the subject, will, I think, be satisfied, that although the British Courts profess to decide upon a principle of universal law, when adjudicating upon the effect of a foreign discharge, neither the passage in *Vattel*, to which they constantly refer, nor the practice and doctrines of other nations, will sustain them in the principle to the extent in which they assert it. It was all important to a great commercial nation, the creditors of all the rest of the world, to maintain the doctrine as one of universal obligation, *that the assignment of the bankrupt's effects, under a law of the country of the contract, should carry the interest in his debts, wherever his debtor may reside; and that no foreign discharge of his debtor should operate against debts contracted with the bankrupt in his own country.* But I think it perfectly clear, that in the United States a different doctrine has been established; and since the power to discharge the bankrupt is asserted on the same principle with the power to assign his debts, that the departure from it in the one instance, carries with it a negation of the principle altogether.

It is vain to deny that it is now the established doctrine in

England, that the discharge of a bankrupt shall be effectual against contracts of the State that give the discharge, whatsoever be the allegiance or country of the creditor. But I think it equally clear, that this is a rule peculiar to her jurisprudence, and that reciprocity is the general rule of other countries; that the effect given to such discharge is so much a matter of comity, that the States of the European continent, in all cases reserve the right of deciding whether reciprocity will not operate injuriously upon their own citizens.

Huberus, in his third axiom on this subject, puts the effect of such laws upon the ground of courtesy, and recognises the reservation that I have mentioned; other writers do the same.

I will now examine the American decisions on this subject; and first, in direct hostility with the received doctrines of the British Courts, it has been solemnly adjudged in this Court, and, I believe, in every State Court of the Union, that notwithstanding the laws of bankruptcy in England, a creditor of the bankrupt may levy an attachment on a debt due the bankrupt in this country, and appropriate the proceeds to his own debt.

In the case of *Harrison* v. *Sterry*, (5 *Cranch*, 298. 302.) a case decided in this Court in 1809, upon full argument, and great deliberation, and in which all the English cases were quoted, it is expressly adjudged, "that in the case of a contract made with foreigners in a foreign country, the bankrupt laws of the foreign country are incapable of operating a legal transfer of property in the United States," and judgment was given in favour of the attaching creditors, against the claim of the foreign assignees.

In that case, also, another important doctrine is established in hostility with the British doctrine. For the United States had interposed a claim against the English assignees, in order to obtain satisfaction from the proceeds of the bankrupt's effects in this country, for a debt contracted in Great Britain. And this Court decreed, accordingly, expressly restricting the power of the contract to its concoction and exposition.

The language of the Court is, "The law of the place where a contract is made, is, generally speaking, the law of the contract; that is, it is the law by which the contract is expounded. But the right of priority forms no part of the contract itself. It is extrinsic, and is rather a personal privilege, dependent on the laws of the place where the property lies, and where the Court sits which decides the cause.

And, accordingly, the law of the United States was sustained, which gave the debts due the bankrupt here, to satify a debt contracted in England, to the prejudice of the law of England, which gave the same debts to the assignees of the bankrupt.

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It cannot be necessary to go farther than this case to establish, that, so far as relates to the foreign creditor, this country does not recognise the English doctrine, *that the bankrupt law of the country of the contract is paramount in disposing of the rights of the bankrupt.*

The United States pass a law which asserts the right to appropriate a debt due a foreign bankrupt, to satisfying a debt due itself, and incurred by that bankrupt in his own country. The assignees of that bankrupt question this right, and claim the debt as legally vested in them by the law of the country of the contract, and maintain that the debt due the United States, being contracted in Great Britain, was subject to the laws of Great Britain, and, therefore, entitled only to share in common with other creditors in the proceeds of the bankrupt's effects, that the debt so appropriated by the law of the United States to its exclusive benefit was, as to *all the bankrupt's contracts*, or certainly as to *all English* contracts, vested in the assignees, on international principles, principles which gave effect to the English bankrupt laws, so vesting that debt, paramount to the laws of other countries.

In giving effect to the law of the United States, this Court overrules that doctrine; and, in the act of passing that law, this government asserts both the power over the subject, and the right to exercise that power without a violation of national comity; or has at least taken its stand against that comity, and asserted a right to protect its own interests, which, in principle, is equally applicable to the interests of its own citizens.

It has had, in fact, regard to the *lex loci rei sitæ*, as existing in the person and funds of the debtor of the bankrupt, and the rights of self-preservation, and duty of protection to its own citizens, and the actual allegiance of the creditor and debtor, not the metaphysical allegiance of the contract, on which the foreign power is asserted.

It would be in vain to assign the decision of this Court in *Harrison* v. *Sterry*, or the passing of the law of the United States, to the general preference, which the government may assert in the payment of its own debt, since that preference can only exist to the prejudice of its own citizens, whereas, the precedence there claimed and conceded operated to the prejudice of British creditors.

The case of *Baker* v. *Wheaton*, adjudged in the Courts of Massachusetts in the time of Chief Justice Parsons, (5 *Mass. Rep.* 509.) is a very strong case upon this subject. That also

was argued with great care, and all the British cases reviewed; the Court took time to deliberate, and the same doctrine was maintained, in the same year and the same month with *Harrison* v. *Sterry*, and certainly without any communication between the two courts.

The case was this: one *Wheaton* gave a promissory note to one *Chandler*, both being at that time citizens and inhabitants of Rhode Island. *Wheaton* was discharged under the bankrupt laws of Rhode Island, both still continuing citizens and inhabitants of the same State, and the note remaining the property of Chandler. Subsequent to the discharge, Chandler endorses the note to Baker, and Wheaton is arrested in Massachusetts. He pleads the discharge in bar, and the Court, in deciding, expresses itself thus: "When, therefore, the defendant was discharged from that contract, *lege loci*, the promisee was bound by that discharge, *as he was a party to the laws of that State, and assenting to their operation.* But if, when the contract was made, the promisee had not been a citizen of Rhode Island, he would not have been bound *by the laws of it or any other State*, and holding this note at the time of the discharge, he might afterwards maintain an action upon it in the Courts of this State." And again, (page 311,) "if the note had been transferred to the plaintiff, a citizen of this State, whilst it remained due and undischarged by the insolvent laws of Rhode Island, those laws *could not affect his rights in the Courts of law in this State, because he is not bound by them.*"

This, it will be observed, regards a contract acknowledged to be of Rhode Island origin.

There is another case reported in the decisions of the same State, (10 vol. p. 337.) which carries this doctrine still farther, and, I apprehend, to a length which cannot be maintained.

This was the case of *Watson* v. *Bourne*, in which Watson, a citizen of Massachusetts, had sued Bourne in a State Court, and obtained judgment. Bourne was discharged under the insolvent laws of that State, and being afterwards found in Massachusetts was arrested on an action of debt upon the judgment. He pleads the discharge; plaintiff replies, *that he, plaintiff, was a citizen of Massachusetts, and, therefore, not precluded by the discharge.* The origin of the debt does not appear from the report, and the argument turned wholly on the question, whether by entering judgment in the Court of the State, he had not subjected his rights to the State laws *pro tanto.*

The Court overruled the plea, and recognized the doctrine in *Baker* v. *Wheaton*, by declaring "that a discharge of that na-

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ture can only operate where the law is made by an authority common to the creditor and debtor to all respects, *where both are citizens or subjects.*"

I have little doubt that the Court, was wrong in denying the effect of the discharge as against *judgments* rendered in the State Courts, when the party goes voluntarily and unnecessarily into those Courts; but the decision shows, in other respects, how decidedly the British doctrine is repelled in the Courts of that State.

The British doctrine is also unequivocally repelled in a very learned opinion delivered by Mr. Justice Nott, in the Court of the last resort in South Carolina, and in which the whole Court, consisting of the common law judges of the State, concurred. This was in the case of the *Assignees of Topham* v. *Chapman et al.* in which the rights of the attaching creditor were maintained against those of the assignees of the bankrupt; (1 *Constitutional Reports*, p. 253.) and that the same rule was recognized at an early day in the Court of Pennsylvania, appears from the leading case of *Phillips* v. *Hunter* (2 *H. Black.* 402.) in which a British creditor, who had recovered of a debtor of the bankrupt in Pennsylvania, was compelled by the British Courts to refund to the assignees in England, as for money had and received to their use.

I think it, then, fully established, that in the United States a creditor of the foreign bankrupt may, attach the debt due the foreign bankrupt, and apply the money to the satisfaction of his peculiar debt, to the prejudice of the rights of the assignees or other creditors.

I do not here speak of assignees, or rights created, under the bankrupt's own deed; those stand on a different ground, and do not effect this question. I confine myself to assignments, or transfers, resting on the operation of the laws of the country, independent of the bankrupt's deed; to, the rights and liabilities of debtor, creditor, bankrupt, and assignees, as created by law.

What is the actual bearing of this right to attach, so generally recognized by our decisions?

It imports a general abandonment of the British principles; for, according to their laws, the assignee alone has the power to release the debtor. But the right to attach necessarily implies the right to release the debtor, and that right is here asserted under the laws of a State which is not the State of the contract.

So, also, the creditor of the bankrupt is, by the laws of his country, entitled to no more than a ratable participation in the

bankrupt's effects. But the right to attach imports a right to exclusive satisfaction, if the effects so attached should prove adequate to make satisfaction. 1827. Ogden v. Sounders.

The right to attach also imports the right to sue the bankrupt; and who would impute to the bankrupt law of another country, the power to restrain the citizens of these States in the exercise of their right to go into the tribunals of their own country for the recovery of debts, wherever they may have originated? Yet, universally, after the law takes the bankrupt into its own hands, his creditors are prohibited from suing.

Thus much for the law of this case in an international view. I will consider it with reference to the provisions of the constitution.

I have said above, that I had no doubt, the erection of a distinct tribunal for the resort of citizens of other States, was introduced, *ex industria*, into the constitution, to prevent, among other evils, the assertion of a power over the rights of the citizens of other States, upon the metaphysical ideas of the British Courts on the subject of jurisdiction over contracts. And there was good reason for it; for, upon that principal it is, that a power is asserted over the rights of creditors which involves a mere mockery of justice.

Thus, in the case of *Burrows* v. *Jemino*, (reported in 2 *Strange*, and better reported in *Mosely*, and some other books, the creditor, residing in England, was cited, propably, by a placard on a door-post in Leghorn, to appear there to answer to his debtor, and his debt passed upon by the Court, perhaps, without his having ever heard of the institution of legal process to destroy it.

The Scotch, if I remember correctly, attach the summons on the flag-staff, or in the market place, at the shore of Leith; and the civil law process by proclamation or *viis et modis*, is not much better, as the means of subjecting the rights of foreign creditors to their tribunals.

All this mockery of justice, and the jealousies, recriminations, and, perhaps, retaliations, which might grow out of it, are avoided, if the power of the States over contracts, after they become the subject exclusively of judicial cognizance, is limited to the controversies of their own citizens.

And it does appear to me almost incontrovertible, that the States cannot proceed one step farther without exercising a power incompatible with the acknowledged powers of other States, or of the United States, and with the rights of the citizens of other States.

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Every bankrupt or insolvent system in the world, must partake of the character of a judicial investigation. Parties whose rights are to be affected, are entitled to a hearing. Hence every system, in common with the particular system now before us, professes to summon the creditors before some tribunal, to show cause against granting a discharge to the bankrupt.

But on what principle can a citizen of another State be forced into the Courts of a State for this investigation? The judgment to be passed is to prostrate his rights; and on the subject of these rights the constitution exempts him from the jurisdiction of the State tribunals, without regard to the place where the contract may originate. In the only tribunal to which he owes allegiance, the State Insolvent, or bankrupt laws, cannot be carried into effect; they have a law of their own on the subject;(a) and a certificate of discharge under any other law would not be acknowledged as valid even in the Courts of the State in which the Court of the United States that grant it, is held. Where is the reciprocity? Where the reason upon which the State Courts can thus exercise a power over the suitors of that Court, when that Court possesses no such power over the suitors of the State Courts?

In fact, the constitution takes away the only ground upon which this eminent dominion over particular contracts can be claimed, which is that of sovereignty. For the constitutional suitors in the Courts of the United States, are not only exempted from the necessity of resorting to the State tribunals, but actually cannot be forced into them. If, then, the law of the English Courts had ever been practically adopted in this country in the State tribunals, the constitution has produced such a radical modification of State power over even their own contracts, in the hands of individuals not subject to their jurisdiction, as to furnish ground for excepting the rights of such individuals from the power which the States unquestionably possess over their own contracts, and their own citizens.

Follow out the contrary doctrine in its consequences, and see the absurdity it will produce.

The constitution has constituted Courts professedly independent of State power in their judicial course; and yet the judgments of those Courts are to be vacated, and their prisoners set at large, under the power of the State Courts, or of the State laws, without the possibility of protecting themselves from its exercise.

(a) Act of Congress of January 6th, 1800, ch. 4. (vol. 3. p. 301.)

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I cannot acquiesce in an incompatibility so obvious.

No one has ever imagined, that a prisoner in confinement under process from the Courts of the United States, could avail himself of the insolvent laws of the State in which the Court sits. And the reason is, that those laws are municipal and peculiar, and appertaining exclusively to the exercise of State power in that sphere in which it is sovereign, that is, between its own citizens, between suitors subjected to State power exclusively, in their controversies between themselves.

In the Courts of the United States, no higher power is asserted than that of discharging the individual in confinement under its own process. This affects not to interfere with the rights of creditors in the State Courts, against the same individual. Perfect reciprocity would seem to indicate, that no greater power should be exercised under State authority over the rights of suitors who belong to the United States jurisdiction. Even although the principle asserted in the British Courts, of supreme and exclusive power over their own contracts, had obtained in the Courts of the United States, I must think that power has undergone a radical modification by the judicial powers granted to the United States.

I, therefore, consider the discharge under a State law, as incompetent to discharge a debt due a citizen of another State; and, it follows, that the plea of a discharge here set up, is insufficient to bar the right of the plaintiff.

It becomes necessary, therefore, to consider the other errors assigned in behalf of the defendant; and, first, as to the plea of the act of limitations.

The statute pleaded here is not the act of Louisiana, but that of New-York; and the question is not raised by the facts or averments, whether he could avail himself of that law if the full time had run out before his departure from New-York, as was supposed in argument. The plea is obviously founded on the idea, that the statute of the State of the contract, was generally pleadable in any other State, a doctrine that will not bear argument.

The remaining error assigned has regard to the sum for which the jugdment is entered, it being for a greater amount than the nominal amount of the bills of exchange on which the suit was brought, and which are found by the verdict.

There has been a defect of explanation on this subject; but, from the best information afforded us, we consider the amount for which judgment is entered, as made up of principal, interest, and damages, and the latter as being legally incident to the find-

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ing of the bills of exchange, and their non-payment, and assent ed by the Court under a local practice consonant with that by which the amount of written contracts is determined, by refer ence to the prothonotary, in many others of our Courts. We therefore, see no error in it. The judgment below will, there fore, be affirmed.

And the purport of this adjudication, as I understand it, is that as between citizens of the same State, a discharge of a bankrupt by the laws of that State, is valid as it affects poste rior contracts; that as against creditors, citizens of other States, it is invalid as to all contracts.

The propositions which I have endeavoured to maintain in the opinion which I have delivered are these:

1st. That the power given to the United States to pass bank rupt laws is not exclusive.

2nd. That the fair and ordinary exercise of that power by the States does not necessarily involve a violation of the obliga tion of contracts, *multo fortiori* of posterior contracts.

3d. But when in the exercise of that power, the States pass beyond their own limits, and the rights of their own citizens, and act upon the rights of citizens of other States, there arises a conflict of sovereign power, and a collision with the judicial powers granted to the United States, which renders the exer cise of such a power incompatible with the rights of other States, and with the Constitution of the United States.

Mr. Justice WASHINGTON, Mr. Justice THOMPSON, and Mr. Justice TRIMBLE, dissented.

Mr. Chief Justice MARSHALL, Mr. Justice DUVALL, and Mr. Justice STORY, assented to the judgment, which was entered for the defendant in error.

Judgment affirmed. (a)

(a) In the case of *Shaw* v. *Robbins*, the judgment below was reversed. This was an action on several bills of exchange, drawn by the plaintiff on the defendant, payable to plaintiff's order and by the defendant duly ac cepted. At the time of the transaction, the plaintiff was a citizen of Mas sachusetts, resident in that State, and the defendant a citizen of New-York, and there resident. The action was brought in a State Court, in Ohio, and the defendant relied on a discharge, obtained in New-York, under the pro visions of the insolvent laws of that State. The highest Court of law in Ohio gave judgment for the defendant; and the cause was brought before this Court by a writ of error.

Mr. Justice JOHNSON. This is a contract between a citizen of New-York and a citizen of Massachusetts. It only differs from *Ogden* v. *Saunders* in this particular, that the action was brought in a State Court; not the Court of New York, but the Court of another state. We think the decision in the case of *Ogden* v. *Saunders* applies to this, and must govern its decision. The judgment below, therefore, must be reversed, and the cause remand ed for such further proceedings as the law may require.

MASON *against* HAILE.

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THIS was an action of debt, brought in the Circuit Court of Rhode Island, upon two several bonds given by the defendant, Haile, to the plaintiff, Mason and one Bates, whom the plaintiff survives, one of which bonds was executed on the 14th, and the other on the 29th of March, 1814. The condition in both bonds was the same, except as to dates and sums, and is as follows:

"The condition of the above obligation is such, that if the above bounden Nathan Haile, now a prisoner in the State's jail, in Providence, within the county of Providence, at the suit of Mason and Bates, do, and shall from henceforth continue to be a true prisoner, in the custody, guard, and safe-keeping of Andrew Waterman, keeper of said prison, and in the custody, guard, and safe keeping of his deputy, officers, and servants, or some one of them, within the limits of said prison, until he shall be *lawfully discharged*, without committing any manner of escape or escapes, during the time of restraint, then this obligation to be void, or else to remain in full force and virtue."

To the declaration upon these bonds, the defendant pleaded several pleas, the substance of which was, that in June, 1814, after giving the bonds, the defendant presented a petition to the legislature of Rhode Island, praying for relief, and the benefit of an act passed in June, 1756, entitled "an act for the relief of insolvent debtors," and that, in the mean time, all proceedings against him for debt might be stayed, and he be liberated from jail, on giving bonds to return to jail in case his petition shall not be granted. Upon this petition, the legislature, in February, 1815, passed the following resolution: "On the petition of Nathan Haile, praying, for the reasons therein stated, that the benefit of an act, entitled, 'An act for the relief of insolvent debtors,' passed in the year 1756, be extended to him, voted, that said petition be continued till the next session of this assembly; and that, in the mean time, all proceedings against him, the said Haile, on account of his debts, be stayed; and that the said Haile be liberated from his present confinement, in the jail, in the county of Providence, on his giving sufficient bond to the sheriff of said county, conditioned to return to jail in case said petition is not granted." That, on the 28th of February, 1815, he gave sufficient bond, with surety, to the sheriff, conditioned to return to jail, in case the petition should not be granted, and, thereupon, the sheriff did liberate and discharge him from his

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said confinement, in said jail, and permit him to go at large, out of said Waterman's custody, and the custody of the keeper of said prison, his deputy, officers, and servants, and out of the limits of said jail and jail-yard; and he, said Haile, did, upon being so liberated, depart and go at large out of the same accordingly, and so continued at large and liberated, until the prayer of said petition was granted by the legislature, at the February session, 1816, and ever since, as lawfully he might. That, in February, 1816, the legislature, upon a due hearing, granted the prayer of the defendant's petition, and passed the following resolution: "On the petition of Nathan Haile, of Foster, praying, for the reasons therein stated, that the benefit of an act passed in June, 1756, for the relief of insolvent debtors, may be extended to him; voted, that the prayer of the petition be, and the same is hereby granted." That the defendant afterwards, in pursuance of the above resolution, and of the laws of the State, received in due form, from the proper court, a judgment, "that he should be, and thereby was, fully discharged of and from all debts, duties, contracts, and demands, of every name, nature, and kind, outstanding against him, debts due to the State aforesaid, and to the United States, excepted, and from all imprisonment, arrest, and restraint of his person therefor."

To the pleas so pleaded the plaintiff demurred; there was a joinder in demurrer; and, on the argument of the cause, the opinions of the judges of the Court below were opposed, upon the question whether the defendant was entitled to judgment, on the ground that the matters set forth on his part in his pleas, were sufficient to bar the action, or whether the plaintiff was entitled to judgment upon the demurrers and joinders. The question was thereupon certified to this court for final decision.

Feb. 9th.

The cause was argued by Mr. *Webster* and Mr. *Bliss*, for the plaintiff, and by Mr. *Whipple* and Mr. *Wheaton*, for the defendant.

Mr. Justice THOMPSON delivered the opinion of the Court.

The question in this case arises upon the following certificate of a division of opinion of the judges of the Circuit Court of the United States for the District of Rhode Island. "This cause came on to be heard, and was argued by counsel on both sides, and thereupon the following question occurred: viz. whether, upon the amended pleas in this case, severally pleaded to the first and second counts of the plaintiff's declaration, and to which there are demurrers, and joinders in demurrer, the de-

fendant is entitled to judgment, on the ground that the matters set forth therein, on the part of the defendant, are sufficient to bar the action; or whether the plaintiff is entitled, upon said demurrers and joinders, to judgment? Upon which question the Court was divided in opinion."

It is not understood by this Court, that any question, as to the sufficiency of the pleas, in point of form, is drawn under examination, but simply, whether, upon the merits, the matter thereby set up is sufficient to bar the action. The action is founded upon two several bonds, given by the defendant to the plaintiff, and one Bates, whom the plaintiff survives, one dated the 14th, and the other the 29th of March, 1814. The condition in both bonds is the same, except as to dates and sums, and is as follows: "The condition of the above obligation is such, that if the above bounden Nathan Haile, now a prisoner in the States's jail, in Providence, within the county of Providence, at the suit of said Mason and Bates, do, and shall from henceforth continue to be a true prisoner, in the custody, guard, and safe-keeping of Andrew Waterman, keeper of said prison, and in the custody, guard, and safe keeping of his deputy, officers, and servants, or some one of them, within the limits of said prison, until he shall be *lawfully discharged*, without committing any manner of escape or escapes during the time of restraint, then this obligation to be void, or else to remain in full force and virtue."

The defence set up by the pleas, to show there has been no breach of the condition of the bond, is substantially, that in June, 1814, after giving the bond in question, the defendant presented a petition to the legislature of Rhode Island, praying relief, and the benefit of the insolvent law of 1756; and that, in the mean time, all proceedings against his person and estate, for the collection of debts, might be stayed, and he be liberated from jail, on giving bonds to return in case his petition should not be granted. Upon this petition, the legislature, in February, 1816, passed the following resolution: "On the petition of Nathan Haile; praying, for the reasons therein stated, that the benefit of an act, entitled, an act for the relief of insolvent debtors, passed in the year 1756, be extended to him, *voted*, that said petition be continued until the next session of this assembly; and that, in the mean time, all proceedings against the said Haile, on account of his debts, be stayed; and that the said Haile be liberated from his present imprisonment, in the jail, in the county of Providence, on his giving sufficient bond to the sheriff of the county, conditioned to return to jail in case said petition is not granted." The defendant, after the passing of this resolution,

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gave the bond required by it, and, on the 28th of the same month, was discharged from imprisonment, and has ever since been at large, out of the custody of the sheriff. In February, 1816, the legislature, upon a due hearing, granted the prayer of the defendant, and passed the following resolution: "On the petition of Nathan Haile, of Foster, praying, for the reasons therein stated, that the benefit of an act passed in June, 1756, for the relief of insolvent debtors, may be extended to him, voted, that the prayer of the said petition be, and the same is hereby granted." By the granting of the prayer of the petition, the condition of the second bond given to the sheriff was complied with, and the bond became extinguished.

The defendant afterwards proceeded to take the benefit of the insolvent act revived in his favour, according to the statute provisions, and received in due form from the proper Court, a judgment, "that he should be, and thereby was fully discharged of and from all debts, contracts and demands, of every name, nature, and kind, outstanding against him, debts due to the State aforesaid, or to the United States, excepted, and from all imprisonment, arrest, and restraint of his person therefor." The insolvent act of 1756 is not considered in force as a general and permanent law, but the legislature of Rhode Island has been in the constant habit of entertaining petitions, like the present, and has by the general law of 1798, (now in force,) prescribed the mode by which such petitions are to be regulated, and in case of granting the prayer of the petition, the course is to pass an act or resolution, giving the benefit of the act of 1756 to the petitioner, and thus, in effect, reviving it for his particular benefit. So, that the mode pursued to obtain the discharge of the defendant, as set out in the pleas, was according to the established course of proceeding in cases of insolvency, and in conformity to the laws of Rhode Island, by which the defendant was discharged from all his contracts, and from *imprisonment*.

Condition of the bond, whether satisfied by the discharge, according to the insolvent laws of the State, and the usage and practice under them.

The effect of this discharge upon the original judgment against Haile, is not now drawn in question. The only inquiry is, whether he has violated the condition of his bonds of March, 1814, by going at large, under the authority and sanction of the resolutions of the legislature, as before stated. His bond required him to remain a true prisoner, until he should be *lawfully discharged*, without committing any manner of escape during the time of restraint. The bond is not that he shall remain a true prisoner until the debt shall be paid. Nor is there any thing upon the face of the bond, or if we look out of it, to the known and established laws and usages in that State, calling for

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such a construction. A lawful discharge, in its general signification, will extend to, and be satisfied by, any discharge obtained under the legislative authority of the State. And it is not unreasonable to consider such prison bonds as given subject to the ordinary and well known practice in Rhode Island, for the legislature to entertain petitions in the manner pursued by the defendant, to obtain the benefit of the insolvent act of 1756, in the manner in which these petitions are received and proceeded upon, as prescribed by the act of 1798. And, indeed, this cannot strictly be considered a private contract between the parties, but rather as a statute engagement, imposed by an act of the legislature, and as a part of the process under which the defendant was held as a prisoner. And with the full knowledge of this regulation and practice, it is hardly to be presumed, that such discharges were not understood to be lawful discharges. And the same remarks will apply to the term escape in the bond, which can mean no more than a departure from the limits without lawful authority. Suppose the legislature, after the execution of this bond, had enlarged the jail limits? It surely would not have been an escape for the defendant to have availed himself of the enlarged limits, and gone beyond his former bounds. And yet, if the limits prescribed at the time the bond was executed, are to govern the effect and operation of the bond, it would be an escape. Such bonds may well be considered as an enlargement of the prison limits, and a mere modification of the imprisonment, according to the provision of the laws of Rhode Island.

The State legislatures have sovereign power over the subject of imprisonment for debt, on process from their own Courts.

Can it be doubted but the legislatures of the States, so far as relates to their own process, have a right to abolish imprisonment for debt altogether, and that such law might extend to present, as well as future imprisonment? We are not aware that such a power in the States has ever been questioned. And if such a general law would be valid under the constitution of the United States, where is the prohibition to be found, that denies to the State of Rhode Island the right of applying the same remedy to individual cases? This is a measure which must be regulated by the views of policy and expediency entertained by the State legislatures. Such laws act merely upon the remedy, and that in part only. They do not take away the entire remedy, but only so far as imprisonment forms a part of such remedy. The doctrine of this Court in the case of *Sturges* v. *Crowninshield*, (4. *Wheat. Rep.* 200.) applies with full force to the present case. "Imprisonment of the debtor," say the Court, "may be a punishment for not performing his contract, or may

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be allowed as a mean for inducing him to perform it. But a State may refuse to inflict this punishment, or may withhold it altogether, and leave the contract in full force. Imprisonment is no part of the contract, and simply to release the prisoner, does not impair its obligation."

The discharge in this case, was a *lawful discharge*, within the condition of the bond for the jail liberties.

In whatever light, therefore, the question is viewed, no breach of the condition of the bond, according to its true sense and interpretation, has been committed. The liberation of the defendant from confinement, on his giving bond to the sheriff to return to jail in case his petition for a discharge should not be granted, was sanctioned by the due exercise of legislative power, and was analogous to extending to him more enlarged jail limits, and would not be considered an escape. And both this and the final discharge, so far, at all events, as it related to the imprisonment of the defendant, affected the remedy in part only, and was in the due and ordinary exercise of the powers vested in the legislature of Rhode Island, and was a lawful discharge, and no escape, and of course, no breach of the condition of the bond in question.

It must, accordingly, be certified to the Circuit Court, that the matters set forth in the defendant's amended pleas, are sufficient to bar the plaintiff's action.

Mr. Justice WASHINGTON dissented.

In the case of Conard vs. the Atlantic Insurance company of New York, reported in 1st. Peters, p. 386—454, at p. 438, January, term 1828, the nature and effect of the priority of the United States, under the statute of 1799, c. 128, sec. 65 is explained. It is obvious that the latter clause of this section, is merely an explanation of the term "Insolvency" used in the 1st. clause, and embraces three classes of cases all of which relate to living debtors.

1st. When a debtor not having sufficient property to pay all his debts, shall have made a voluntary assignment thereof for the benefit of his creditors.

2nd. When the estate and effects of an absconding or concealed, or absent debtor shall have been attached by process of law.

3rd. Where an act of legal bankruptcy shall have been committed.

Insolvency in the sense of the statute, relates to such a general divestment of property as would in fact be equivalent to Insolvency in its technical sense—it supposes that all the debtor's property has passed from him. This was the language of the decision in the case of the United States v. Hool, 3 Cranch 73,

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and it was consequently held, that an assignment of part of the debtor's property did not fall within the provisions of the statute, mere inability of the debtor to pay all his debts is not an Insolvency within the statute—but it must be manifested in one of the three modes pointed out in the explanatory clause of the section.

Reported in 2nd Peters 331, January, term 1829. The case of the bank of the United States vs. Weisiger may by some be considered as bearing upon the subject of this compilation, but as that case turned altogether upon doctrines peculiar to the states of Virginia, and Kentucky, it is not deemed important, nor would its insertion here prove in any degree serviceable. The only principle of general interest decided and settled in that case, is, that the discharge of the Insolvent under a State statute is a judicial act, of a record character and is in its nature as it must be in contemplation of law, the most satisfactory evidence of the Insolvency of the person discharged.

Cranch reports the decisions of the Supreme Court, U. S.
From 1802 to 1815
Wheaton From 1815 to 1827
Peters From 1827 to

APPENDIX.

It has been deemed advisable to annex to the foregoing compendium, a brief statement of the mode of proceeding both by insolvents and their creditors, upon applications to the Board of Commissioners of insolvent debtors for the City and county of Baltimore.

The forms requisite in such applications will also be added, and will be found serviceable in the insolvent practice in other counties where the regulations enjoined upon and observed by the Board of Commissioners, have not been adopted by the courts, or enforced by Legislative enactment.

When an individual designs making application for the benefit of the insolvent laws, he must, in the first place, prepare a petition, accompanied by the affidavit of some friend, that the petitioner has actually resided within the State of Maryland, for two years next preceding his application.—The papers requisite at the first appearance before the Commissioners in order to obtain a personal discharge, are first a written or printed petition, stating that he is actually imprisoned, &c. to which are annexed.

A schedule of his property.

A list of debts due to him.

A list of debts due from and owing by him.

An affidavit declaring the correctness of the schedule.

An affidavit of some individual, to the residence of the applicant within the State during two years next preceding his applition.

A certificate of the sheriff, warden or bailiff, in whose custody the applicant may be, stating that he is actually confined.

(PETITION.)

To the Commissioners of Insolvent Debtors for the City and county of or to the Honorable, the Judges of County Court.

THE PETITION OF A. B.

of ( ) *County and now residing therein.*

Respectfully Sheweth,

That your petitioner is now actually imprisoned in ——— County, for debts which he is unable to pay: that he is willing and offers to deliver up to the use of his creditors, all his property, real, personal and mixed, to which he is in any way entitled, (the necessary wearing apparel and bedding of himself and his family excepted,) a schedule whereof, together with a list of his creditors and debtors, as far as he can ascertain them at present, are hereunto on oath annexed.

Your petitioner hereunto annexes proofs on oath, that he has resided two years preceding this his application, within the State of Maryland. Your petitioner therefore, prays you to grant to him the benefit of the Insolvent Laws of this State, and he will pray, and so forth.

(Signed) A. B.

January 1*st*, 1831.

A SCHEDULE

Of the property, real, personal and mixed, of A. B. to which he is in any way entitled, the necessary wearing apparel and bedding of himself and his family excepted.

One horse, two cows, &c. &c. (Signed,)

A. B.

A list of the debts due and owing to A. B. as far as he can at present ascertain them.

C. D. - - -	$100
E. F. - -	50 &c.
	$150 (Signed,)

A. B.

A list of creditors of A. B. as far as he can at present ascertain them.

	DOLLARS.	CENTS.		DOLLARS.	CENTS.
G. H.	50				
J. K.	100				
L. M.	170				
N. O.	230				
	$550		(Signed,) A. B.		

BALTIMORE CITY (or County) ss.

On the day of in the year eighteen hundred and the within named A. B. made oath before me, the subscriber, a justice of the peace for Baltimore City (or county) that the aforegoing Schedule and list of debts due him contain a true statement of all his property, real, personal and mixed, to which he is any way entitled, the necessary wearing apparel and bedding of himself and family excepted; and that the aforegoing list of creditors is a true list of all his creditors, and also the sums of money due to them respectively, as far as he can at present ascertain the same.

SWORN BEFORE J. P.

BALTIMORE CITY (or County) ss.

On the day of in the year eighteen hundred and R. S. made oath before me, the subscriber, a justice of the peace for Baltimore City or county, that A. B. the petitioner before named, has resided in the State of Maryland, two years next preceding the date of the within petition, and still resides therein.

SWORN BEFORE J. P.

I HEREBY CERTIFY, that the within named A. B. is now actually imprisoned in County, at the suit of T. U. for the sum of $— and that he is not now imprisoned on account of any breach of the peace, or for the non-payment of any fine or penalty for a breach of the Laws of this State, or of the United States. J. C. *Bailiff.*

☞ By a law of 1830—31, a certificate of the actual imprisonment of the debtor is rendered unnecessary.

Pursuant to the directions of the Act of Assembly, entitled, "An Act relating to Insolvent Debtors in the City and county of Baltimore," and of the Supplement, thereto, we do hereby appoint and fix the day of next, for the personal appearance of A. B. the within named Insolvent Debtor, before us, Commissioners of Insolvent Debtors for the City and county of Baltimore, at our office, in the Court House in the said City, at o'clock in the noon of the same day, to answer such interrogatories as may be propounded to him by any of his creditors, and we also hereby appoint and fix the day of next, for the final appearance of the said Insolvent Debtor before Baltimore County Court, to answer

such allegations as may be filed against him by his creditors, or any of them, and for the final hearing of his said application.

GIVEN under our hands this day of in the year eighteen hundred and

W. G. D. W.
E. L. F.
L. E.

Next follows the Bond of the applicant conditioned for his personal appearance on a day specified by the Commissioners (or court) and with surety to be approved by the Board.

[No. 2.]

(APPEARANCE BOND.)

KNOW ALL MEN BY THESE PRESENTS, That we A. B. and C. D. of county, are held and firmly bound unto the state of Maryland, in the sum of dollars, money of the United States, to be paid to the said state, or to its certain attorney or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this day of in the year eighteen hundred and

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bound A. B. shall make his personal appearance before the Commissioners of insolvent debtors for the city and county of Baltimore, at the Court-house in the said city, on the day of next, at o'clock in the noon, and answer such interrogatories as may be propounded to him by any of his creditors, agreeably to the act of assembly, entitled, "an act relating to insolvent debtors in the city and county of Baltimore," and shall also make his personal appearance before the Judges of Baltimore county court, at the Court-house in the City of Baltimore, on the day of next, then and there to answer such allegations and interrogatories as the creditors of the said or any of them may have filed against him, agreeably to the said act of assembly, and the act entitled "an act for the relief of sundry insolvent debtors," and the several supplements thereto, and continue in court until duly discharged; then the above obligation to be void, else to be and remain in full force and virtue in law.

Signed, sealed and delivered in the presence of H. T.

A. B. (*Seal.*)
C. D. (*Seal.*)

By order of the Commissioners of insolvent debtors for the City and county of Baltimore, NOTICE is hereby given to the creditors of A. B. an insolvent debtor, that a personal discharge hath been granted to the said debtor, and that the day of next, hath been fixed for the final hearing in his case before Baltimore county court.

The said creditors are required to attend at the office of the said Commissioners in the Court-house, in the city of Baltimore, on the day of next, at o'clock in the noon, and nominate a trustee or trustees, to be appointed for their benefit; and, to give all the information in their possession to the said Commissioners, to enable them to report to the said court.

DATED the day of in the year 18

S. M. *Clk.*

IN THE CASE OF A. B. AN INSOLVENT DEBTOR.

It is ordered that the within notice be published in the newspaper, once a week until the day of next; and that so much of said notice as relates to the personal discharge and day fixed for the final hearing of said insolvent, be published in said newspaper, once a week for three months, before the day fixed for the said final hearing.

W. G. D. W.
E. L. F.
L. E.
} Com'rs.

The applicant will then shew to the Board a deed to his provisional trustee of all his property and effects, &c. by the law of 1829, c. 208. § 4, such deed is not requisite.

[No. 3.]

(DEED.)

THIS INDENTURE, made this day of in the year of our Lord, one thousand eight hundred and between A. B. of Baltimore in the State of Maryland of the one part, and H. F. of the other part: WHEREAS on the application of the said A. B. to the Commissioners of insolvent debtors for the city and county of Baltimore, for the benefit of the acts of assembly for the relief of insolvent debtors, the said Commissioners, on the said day of appointed the above named H. T. provisional trustee for the benefit of the creditors of the said A. B. and did order and direct that the said A. B. should execute a deed to the said trustee of all his

property, estate and effects, and should deliver the same to the trustee, together with his books, papers, accounts, bonds, notes and evidences of debt, agreeably to the provisions of the act of assembly in such cases made and provided.

NOW THIS INDENTURE WITNESSETH, That the said A. B. in pursuance of the premises, and in consideration of one dollar current money, to be paid by the said H. T. hath granted, bargained and sold, released, conveyed, assigned, transferred, and set over, and by these presents doth freely and absolutely grant, bargain and sell, release, convey, assign, transfer and set over unto the said H. T. his heirs, executors and administrators, all and every the household goods and furniture, effects and chattels, debts, and sum and sums of money belonging to, and due or owing to him the sad A. B. as are in the schedule of the said A. B. particularly mentioned; and also all other the property and estate, real personal and mixed, of what kind, nature or quality soever, (excepting the wearing apparel, bed and bedding of the said A. B.) which the said A. B. has or claims any title to, or is in any respect entitled to, in possession, remainder or reversion; to have and to hold the same, and every part and parcel thereof, unto him the said H. T. his heirs, executors, administrators and assigns, forever, in trust, for the creditors of the said A. B. and for their use and benefit, agreeably to the act of assembly, entitled an act for the relief of sundry insolvent debtors, and the several supplements thereto.

IN WITNESS WHEREOF, the said A. B. hath hereunto set his hand and affixed his seal, the day and year first above mentioned.

Signed, sealed and delivered in the presence of Y. Z. } A. B. (*Seal.*)

BALTIMORE ss.

On the day of in the year eighteen hundred and came A. B. before us, two justices of the peace for the aforesaid, and acknowledged the within instrument of writing to be his act and deed, according to the true intent and meaning thereof, and the act of assembly in that case made and provided.

Acknowleged before J. P.
T. H. B.

BALTIMORE ss.

I, H. T. provisional trustee appointed by the Commissioners of insolvent debtors for the city and county of Baltimore, on behalf of the creditors of A. B. an insolvent debtor, do hereby

certify, that I have received of the said A. B. all his property, estate and effects: and also all his books, papers, accounts, bonds, notes, and evidences of debt as mentioned on his schedule. H. T.

WITNESS, X. Y.

The paper next presented is the trustee's bond with security to be approved by the commissioners (or the court) the same form being used by both the provisional and permanent trustee.

[No. 4.]

(TRUSTEE'S BOND.)

KNOW ALL MEN BY THESE PRESENTS, THAT WE, *H. F. and W. B. of county, are held and firmly bound unto the State of Maryland, in the sum of dollars, money of the United States, to be paid to the said State, or to its certain attorney or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this day of in the year eighteen hundred and*

WHEREAS, the Commissioners of insolvent debtors for the city and county of Baltimore have this day appointed H. T. provisional trustee to take possession for the benefit of the creditors of A. B. an insolvent debtor of county of all his property, estate and effects, books, papers, accounts, bonds, notes and evidences of debt, agreeably to the directions of the act of the General Assembly of Maryland, entitled, "An act relating to insolvent debtors in the city and county of Baltimore;"

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bound H. T. do and shall well and faithfully perform the duties required of him as provisional trustee aforesaid, and preserve, dispose of, transfer, convey and deliver to such person, and in such manner as the aforesaid Commissioners shall appoint and direct, all the property, estate and effects, books, papers, accounts, bonds, notes and evidences of debt which he shall receive, or which shall be conveyed, transferred or delivered to him as trustee aforesaid; and in all respects obey and perform the lawful orders and directions of the said Commissioners in the premises, then the above obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered in the presence of P. X.

H. F. (*Seal.*)
W. B. (*Seal.*)

And lastly the commissioners grant to the applicant a certificate of his personal discharge of which the following is the usual form;

[No. 5.]

(PERSONAL DISCHARGE.)

BALTIMORE, SCT.

On application of A. B. of Baltimore by petition in writing to us, the subscribers, commissioners of insolvent debtors for the city and county of Baltimore, stating that he is now actually imprisoned* in Baltimore county, and praying to us to grant to him the benefits of the Insolvent Laws of this state, a schedule of his property and a list of his creditors, on oath, as far as he can ascertain them, being annexed to his petition, and the said A. B. having satisfied us by competent testimony that he has resided two years next preceding the time of his application, within the State of Maryland, and we having appointed H. T. provisional trustee for the benefit of the creditors of the said A. B. and the said trustee having given bond with security, approved by us, for the faithful performance of his said trust, and the said trustee being in possession of all the property of the said insolvent debtor, and the said A. B. having also given bond with security approved by us, for his personal appearance before us, at our office in the city of Baltimore, on the day of next, to answer such interrogatories as may be propounded to him by any of his creditors, and also for his personal appearance before Baltimore county court on the day of next , to answer such allegations as may be filed against him by any of his creditors, and the said A. B. having before us taken the oath directed to be taken by the said insolvent laws for the delivery up of his property.

THESE ARE THEREFORE TO CERTIFY, *That we have this day granted a personal discharge to the said A. B.*

Given under our hands this day of in the year one thousand eight hundred and

W. G. D. W.
E. L. F.
L. E.
} COM'RS.

No established form is observed in framing interrogatories against an applicant—the caption is generally as follows.

"Interrogatories to be propounded to A. B. an applicant for the benefit of the insolvent laws of Maryland, by C. D. one of his creditors, &c."

* See page 224, 225.

The caption of the answers to interrogatories, for the most part is,

"The answers of A. B. an applicant, &c. to the interrogatories filed against him by C. D. one of his creditors."

Which answers must be on oath.

The rules which the commissioners have established for the regulation of their proceedings will point out with clearness and precision the further measures to be taken by either applicants or creditors in the prosecution of their respective designs; those rules which merely concern the Clerk, in his relation towards the commissioners will be omitted.

RULES OF PRACTICE *in the Court of Commissioners of Insolvent Debtors, for the City and County of Baltimore.*

1st. All papers intended to be presented to the court, shall first be handed to the clerk, whose duty it is to examine the same and upon finding them correct, to fill up the blanks and hand them to the commissioners for their supervision, and in order that their signatures may be affixed to them, and that the proper oath may be administered to the applicant.

2nd. Relates to the clerk.

3rd. In the examination of a case on interrogatories if there be counsel on both sides, the counsel for the applicant shall read the interrogatories and the counsel for the creditors, the answers, alternately as they occur. After a full perusal of the same if the creditors wish a more detailed examination, and the same be considered requisite by the commissioners, the applicant may be sworn and examined orally by the commissioners and the counsel.

If the written answers be not sufficiently explicit, the creditors may file written objections to the same, shewing their insufficiency—upon the approval of which written objections by the commissioners, the applicant shall be directed to file further answers on or before a day by the commissioners to be specified. As the commissioners do not wish to be made witnesses in any subsequent proceedings, either for or against an applicant examined orally before them, any person or persons wishing to make use of such oral testimony thereafter, should have it committed to writing at the time of the delivery thereof and filed among the papers in the cause.

4th. The commissioners can examine on oath, by them to be administered, no persons other than the applicant, and the persons to whom he may have made conveyances—unless both the parties or their counsel agree that such testimony shall be taken before the Board of commissioners.

5th. Interrogatories may be filed at any time before the commissioners make their final report to the county court.

6th. Additional schedules on oath may be filed at any time previous to the making of the final report.

7th. The question of residence may be examined into at the time of application before a personal discharge shall have been granted as well as subsequently on interrogatories.

8th. The commissioners will receive and examine any written evidence or papers which may be presented to them either by the applicant, the creditors or the counsel of either party, in all cases wherein such evidence may tend to enable them to make a correct report upon the case.

9th. The commissioners will in no case direct their clerk, to withhold from or furnish to the Editors of newspapers, a weekly list of applicants for the benefit of the Insolvent Laws. Although the publication of such weekly lists has now become a custom, the furnishing of them has never been an official act of the Board, and involves the responsibility of the Editors alone, who cause a list of the applicants to be taken from the docket, or induce the clerk to furnish a copy of the same at his own discretion. And as the commissioners are not legally bound either to give or withhold such catalogues, they refrain from making any order or giving any instructions relative thereto.

10th. Pending an application for the benefit of the insolvent laws, the commissioners, previous to the report on a final hearing, will not entertain jurisdiction in a second petition or grant a personal discharge thereon.

11th. Refers to the clerk.

12th. On filing answers to interrogatories exhibited against an applicant, whose schedule does not comprise debts amounting in all, to $200, the applicant shall be required to pay six dollars only.

13th. Relates to the clerk.

14th. In all cases wherein interrogatories shall be filed against an applicant after the day appointed for his personal appearance—the clerk shall serve or cause to be served, a copy thereof, on such applicant personally, on or before a day to be named thereon, and shall in writing return the same with the date of such service endorsed on the original, and the answers thereto shall be filed on or before a day to be specified in such copy.

15th. In order to obtain a second hearing on a case upon which the commissioners may have reported unfavourably, the applicant shall present a special petition, stating all the facts, and shall satisfactorily answer the interrogatories (if any) filed

subsequently to his first application: and if in addition to the answers of the applicant to the interrogatories so exhibited, he were orally examined and an unfavorable report were made on the ground of fraud as established in the opinion of the commissioners, he shall clear himself from such suspicion of fraud before any proceedings can be had on his second application, which shall be by petition, schedule, &c. precisely as in the case of an original application.

16th. The commissioners may make final reports of three different kinds, according to the nature of each case.

1st. That the applicant hath acted fairly and bona fide.

2nd. That he hath *not* acted fairly and bona fide.

3rd. That he hath not complied with the terms and conditions of the insolvent laws, either in *not answering the interrogatories filed against him, or in not appearing on the day appointed therefor.*

17th. In all cases in which the commissioners may not be prepared to make a *final* report, they will continue or postpone the same, and will make a *special* report stating their inability at that time to ascertain whether or not in the cases specified, the Insolvent Laws of Maryland have been complied with.

18th. Such applicant shall give notice of such continuance or postponement, by setting up a notice thereof at the Court-house door or by causing a publication of the same to be inserted in one or more of the newspapers, printed in the city of Baltimore as the commissioners may direct.

19th. The commissioners will affix their signatures to the following papers, when approved of.

1st. To the appearance bond.

2nd. The schedule. 3rd. The notification.

4th. The certificate of personal discharge.

20th. Any individual having the recommendation of a majority of the creditors in value, may be appointed permanent trustee at any time before the day specified for the personal appearance of the applicant: subsequently to that day, the commissioners will make such appointment without special regard to the amount due or owing to the parties making such recommendation: provided they approve the bond of such permanent trustee.

21st. The commissioners will retain in their office a duplicate of the order given by them on the provisional trustee to deliver to the permanent trustee the property, effects, &c. of the applicant in his possession.

22nd. On the service of such order mentioned in the aforegoing rule, on the provisional trustee, and upon his refusal to

deliver over to the permanent trustee the effects, &c. of the applicant in his hands, and on oath of such refusal being produced, in order that an attachment may be obtained, the commissioners will make a special report to the court, accompanied by such oath.

23rd. Where an applicant upon whose case a favorable report shall have been made, fails to obtain the benefit, because of his non-appearance before the court on the day of final hearing, in order that he may not incur the penalty, incident to the forfeiture of his bond, and may obtain a final release, he must present a petition to the county court who will grant a continuance or not, as they may think proper, on terms by them to be specified.

24th. No case on which the commissioners may have made a final report can be a second time investigated, or proceedings be had therein before them, unless in pursuance of the act relative to the second petitions of applicants, (see act of 1822, c, 102, § 1.) or unless such case be remanded to the commissioners by the county court.

25th. After the impetration of a personal discharge, an applicant shall not be allowed to withdraw his papers, unless the clerk of the county court will certify that bail bond and a power of attorney have been filed in the suit, or special bail entered thereon in pursuance of the act of 1819, c. 84, § 3.

26th. The clerk of the commissioners shall give no order to bring a debtor out of jail, unless the fees of the Board shall have been first paid to him, or unless he be specially directed so to do by one or more of the commissioners.

27th. The penalty mentioned in the appearance bond is generally double the amount of debts returned upon the applicant's schedule, and in determining upon the amount of the penalty of the trustee's bond, the Board have regard to the amount of property returned or likely to be placed in the hands of the provisional trustee.

28th. When interrogatories have been filed, and even where the case has been investigated, if before the final report of the commissioners, all the interrogatories filed shall have been ordered to be withdrawn by the party, filing them or his attorney in person or in writing, the opposition of the creditors will be considered as abandoned, and a favorable report will be made upon the case. All papers which may have once been filed, although afterwards marked "withdrawn," yet remain in the office.

29th. The following is a table of the fees to which the commissioners and their clerk are respectively entitled.

1st. On all applications wherein the list of debts due or owing by the insolvent, amounts to $500 or more.

		Total.
Each commmissioner receives, - -	$5	15
The clerk, - - - - - -	1	1
		$16

2nd. On all applications wherein such list does not amount to $500.

Each commissioner, - - - -	$3	6
Clerk, - - - - - -	1	1
		$7

3rd. When such list amounts to $200 or more, and interrogatories shall have been filed against the applicants on filing his answers to the same, he shall pay, each commissioner, - - - - - - $5 $15

4th. When such list embraces debts the total amount of which is less than $200, the applicant shall pay each commissioner, - - - - - - $2 $6

The clerk when furnishing copies of papers to persons applying for the same, makes the usual charge per page.

30th. Where a creditor has had secured to him the debt due or owing to him by the applicant, by deed, mortgage, bill of sale, or any other conveyance or transfer of money or property by or from any applicant, which conveyance, &c. on the face of the transaction, or by such examination, as the commissioners may be enabled to make in the case, shall clearly and indubitably appear to be fraudulent, or to come within the law, vacating all such conveyances or transfers, *for undue preference*, such creditor or creditors shall be taken and considered in the recommendation to appoint a permanent trustee, or for any other purpose, as to all intents, a creditor to the amount so due from such applicant (and so attempted to be secured) the same as if such conveyance or transfer had not been made. But when such conveyance or transfer shall not clearly and indubitably appear to be *fraudulent or* as *an undue preference*, then such creditor shall be considered as satisfied to the amount so conveyed or transferred, and as interested or not in the affairs of said applicant, as there may or not be a balance still due or owing to him.

31st. In conformity to the 25th of the aforegoing rules, and the principle therein stated, no applicant, being in custody under

a warrant, &c. of a justice of the peace can withdraw his application, until security hath been given in the cause before the justice in like manner, as is required in the cases embraced within the 3rd. sec. c. 84, 1819.

Rules of Baltimore County Court, in relation to Insolvents.

Rule 63. In cases where allegations shall be filed by any creditor against an insolvent debtor, the clerk shall issue a subpœna requiring such debtor to answer—which shall be returnable on the first day of the next succeeding term.

64. Every trustee appointed by the court under the act for the relief of insolvent debtors—and the general supplements thereto shall execute a bond with sureties for the due performance of his trust within ten days after such appointment.

65. Trustees under the insolvent laws may sell any real estate or chattels real transferred to them in trust, at public auction in such parcels as they shall deem most convenient and advantageous after giving at least three weeks notice in two or more newspapers of the city of Baltimore, of the time, place, and terms of sale—which shall be that the purchaser or purchasers shall, at their option pay the purchase money on the day of sale or give bonds or notes with security to be approved by the trustee for the payment of one half of the purchase money with interest within six months, and the remaining half with interest within twelve months from the day of sale: and on receipt of the whole of the purchase money, such trustee shall execute conveyances to the purchasers; and such trustee may sell any personal property so transferred to him at public auction, after giving at least ten day's notice in some newspaper, printed in the city of Baltimore: and purchasers at such sales to the amount of thirty dollars or upwards, may be allowed a credit of six months, on giving such security as the trustee shall approve.

66. The trustee of any insolvent debtor before he proceeds to declare a dividend of any effects of such debtor, shall give notice to the creditors by advertisement in some newspaper in the city of Baltimore, to produce to him their claims properly authenticated on or before a day to be stated in such advertisement—which shall be at least three weeks after the first insertion of such advertisement, where the creditors all reside within this state.

And in cases where any of the creditors reside out of this state, such day shall be fixed at least two months after such first insertion.

AN ACT

To provide for the relief of Insolvent Debtors from imprisonment for costs in certain cases, passed February 19th, 1831.

Be it enacted by the General Assembly of Maryland, That any insolvent debtor, who may apply for a personal or final discharge, under the laws of this state, providing for the relief of insolvent debtors, shall be entitled to include in the schedule of his debts, all costs adjudged on which shall accrue after judgment rendered in any penal action against him.—And to be relieved from the payment thereof in the same manner, and upon the same conditions, that he may be discharged from the debts by him contracted: *Provided*, always, that the penalty imposed by the judgment in such action shall have been first remitted by the Governor and Council of this state.

A FURTHER SUPPLEMENT

To the act entitled, An Act for the relief of sundry Insolvent Debtors, passed February, 1831.

Sec. 1. *Be it enacted by the General Assembly of Maryland*, That from and after the passage of this act, it shall not be necessary for any person who may apply for the benefit of the insolvent laws of this state, to produce before the county court, or any judge thereof, or any judge of the orphans' court, or commissioners of insolvent debtors, where such applicant resides, any evidence of his confinement in jail; but the said court, judge or commissioners, as the case may be, shall proceed in all respects, as if such evidence had been produced.

Sec. 2. *And be it enacted*, That it shall be the duty of the county court, or any judge thereof, or any judge of the orphans' court, or commissioners of insolvent debtors, to whom application may hereafter be made by any person, for the benefit of the insolvent laws of this state, such applicant having complied with the provisions of the insolvent laws of this state, in every particular, except producing evidence of his confinement in jail, to grant to such applicant, in writing a personal discharge from arrest on any civil process, until the return day of such applicant's insolvent papers.

Sec. 3. *And be it enacted*, That it shall be the duty of every sheriff, constable, or other officer of this state, upon the arrest of any defendant, on a capias ad respondendum, capias ad satisfaciendem, or any other civil process, and the said defendant being unable, or refusing to satisfy the claim on which, said process

was issued, to produce the body of said defendant, before the county court, or some judge thereof, or some judge of the orphans' court, or commissioners of insolvent debtors of the county where the said defendant resides, and then and there tender to said defendant an opportunity to comply with the provisions of the insolvent laws of this state, except producing evidence of his confinement in jail, and upon the said defendant being unable, or refusing to comply with the provisions of the insolvent laws as aforesaid, and not otherwise, the said sheriff, constable, or other officer shall be authorized to proceed with said defendant, as if this act had never passed.

AN ACT

To abolish imprisonment for debt on certain judgments rendered by justices of the peace.

Be it enacted by the General Assembly of Maryland, That from and after the fourth of July next, it shall not be lawful for any justice of the peace, or Courts of Justice, on the affirmance of any judgment of a justice of the peace, to issue a capias ad satisfaciendum, or execution against the body of any debtor, who may have been a bona fide resident of the state one year, and of the county where the judgment may have been rendered four months, on any judgment rendered by a justice of the peace for any debt not exceeding thirty dollars, contracted after the date aforesaid. *Provided*, That nothing herein contained, shall be construed to prevent the imprisonment of any person against whom fraud has been alleged and proved.

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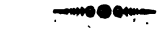

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